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PROCEEDINGS

OF A

GENERAL COURT-MARTIAL,

HELD AT THE

CASTLE OF DUBLIN,

On MONDAY the 21st of JULY, 1788,

AND

Continued by Adjournment to the 12th of AUGUST following,

ON

JOHN CAMPBELL, Esq.

Lieutenant-Colonel of the 9th Regiment of Foot;

FOR

SEVERAL CHARGES

BROUGHT AGAINST HIM BY

DANIEL GWYNNE, GENT.

Late Lieutenant of said Regiment.

DUBLIN:

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M.DCC.LXXXIX.

1789

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PROCEEDINGS

OF A

GENERAL COURT-MARTIAL, &c.

IN pursuance of a warrant from His Excellency the Most Noble the MARQUIS of BUCKINGHAM, Lord Lieutenant General and General Governor of Ireland, &c, &c, bearing Date the 19th Day of July, 1788.

Major-General the EARL of CARHAMPTON,
President.

M E M B E R S.

Major-General Edward Stopford,
Major-General Henry Pringle,
Major-General Charles Lyon,
Major-General John Stratton,
Colonel Charles Vallancy,
Colonel Thomas Piggot,
Colonel Sir James Stewart,
Lieutenant-Colonel Richard Betteworth,
Lieutenant-Colonel Nicholas Loftus,
Lieutenant-Colonel Richard England,
Lieutenant-Colonel Henry Skeffington,
Lieutenant-Colonel George Nugent,
Lieutenant-Colonel John Francis,

A

Lieute.

Lieutenant-Colonel William Myers,
 Lieutenant-Colonel George Hewitt,
 Lieutenant-Colonel Arthur Ormsby,
 Lieutenant-Colonel Matthew Johnson.

FRANCIS PATTERSON, Esquire, Judge Advocate
 General.

The Court being met and duly sworn, and the Judge Advocate being also sworn, proceeded to the trial of Lieutenant Colonel John Campbell, of the 9th Regiment of Foot, on the following charges, exhibited against him by Mr. Daniel Gwynne, viz.

I. FOR that the said Lieutenant Colonel John Campbell did not deliver up, or use his utmost endeavours to deliver up, to the civil magistrates of the city of Cork, several soldiers of the ninth regiment of foot, then commanded by the said Lieutenant Colonel Campbell, who, on the 12th day of November, 1787, had committed a riot in said city, and had assaulted and wounded Mr. Daniel Gwynne, (late lieutenant in said regiment) altho' application was duly made on behalf of the said Mr. Daniel Gwynne by such civil magistrates for that purpose.

II. For that the said Lieutenant Colonel John Campbell did not aid or assist the officers of justice in apprehending and securing the several or any soldiers, so accused, in order that they may be brought to trial.

III. For that the said Lieutenant Colonel John Campbell did permit several of the said soldiers, so accused, to quit their quarters and barracks in the city of Cork, although the said Lieutenant Colonel John Campbell well knew they were so accused.

IV. For

IV. For that the said Lieutenant Colonel John Campbell did knowingly permit or connive at several of said soldiers, so accused, absenting themselves from their quarters and barracks, and secreting themselves, in order to prevent their being apprehended by the officers of justice, and being brought to trial for said riot and outrage.

V. For that the said Lieutenant Colonel John Campbell well knew where several of said soldiers, so accused, were secreted, yet did not apprehend, or endeavour to apprehend, any of them.

VI. For that several of said soldiers, after they were so secreted, were permitted free access to and from the barracks where said ninth regiment was then quartered, without said Lieutenant Colonel John Campbell's using his endeavours, or taking any step whatever to have the said offenders, or any of them, apprehended or brought to a trial.

VII. For that the said Lieutenant Colonel John Campbell, while said soldiers so continued secreted and absent from their regiment, did supply them, or some of them, with money.

VIII. For that the said Lieutenant Colonel John Campbell did permit, allow of, or cause several sums of money to be paid for the use of the said soldiers, or some of them, to the persons who harboured them while they were so secreted and absent from their regiment.

IX. For that the said Lieutenant Colonel John Campbell did not deliver over to the civil magistrates of the city of Cork, on the 29th day of December, 1787, the body of William Moore, a soldier in said ninth regiment, who was accused of said riot and outrage, although the said Moore was on the 29th day of December sent a prisoner from

Charles-Fort for the express purpose of being given up to the civil magistrates at Cork, to be tried for said riot and outrage, and was on said day delivered over a prisoner to the custody of a regimental guard of said ninth regiment, under the command of Lieutenant Colonel Campbell, as commanding officer of that regiment, and garrison field officer of the day for said 29th of December, although said Moore continued a prisoner in custody of said guard for several hours.

Mr. Gwynne (the Prosecutor) here desired leave to challenge a Member of the Court peremptorily, and insisted he had a right to do so.

The Court being then cleared, and having deliberated thereupon; and it being again opened, Mr. Gwynne was informed that the Court over-ruled his challenge.

Mr. Gwynne was then proceeding to make some objections to a Member of the Court; but on being asked whether he persisted in giving those reasons as cause of challenge, he desired leave to wave his objections.

The Prisoner (Lieutenant-Colonel John Campbell, of the 9th Regiment of Foot) being duly arraigned, pleaded Not Guilty.

Mr. Gwynne then read a paper to the Court, which he requested might be inserted on the proceedings, as the opening of his prosecution; of which the following is a copy:—

“IT is His Excellency the Lord Lieutenant's pleasure, that I should be the prosecutor in this case. In that character, for the most part, men stand in a less favourable point of view than the prosecuted. For they are generally presumed to affect an odious purpose—the punishment of an adversary. And though, I confess, I am not able in that

that point of view to discriminate myself from other prosecutors, yet the injuries I have sustained, I am bold to say, would warrant me in every species of rigour: But I hope that I have forbearance enough to avoid whatever may favour of the asperity of persecution, and therefore though I shall not promise to *extenuate any thing*, yet I trust that I will not *set down aught in malice*.

“ The story of my removal, from that description of men to whom I now address myself, is known to you all.—To the circumstances of that removal, none of you I believe are strangers.—Whether he whom I prosecute acted upon that occasion without bias or not, is now of little importance to you, or to the enquiry of this day; but I hope I shall have firmness enough, in my accusation of him, to avoid what I thought his conduct was towards me.

“ You are acquainted also with my having been appointed a prosecutor in another cause, by His Grace the Duke of Rutland.—The much to be lamented death of that nobleman having happened before the assembling of the Court-martial, under the late Lord Lieutenant's command, it was not thought proper to proceed under that authority.—But Major-General Patterson, then the commander in chief of the troops in Munster, was pleased to direct a Court of Enquiry to assemble for the purpose of investigating the same charges. The powers and purposes of courts of enquiry you, Gentlemen, may, from your situation, be better acquainted with than I am. Therefore I shall not trespass on your time or patience with any detail of their proceedings, or the consequences of their enquiry, save having said, that on the 7th of November, 1787, the President, Lieutenant-Colonel St. George, of the 70th regiment; Lieutenant-Colonel Horsfall, of the 58th regiment; Major Rawlinson, and Captain

tain Sir Samuel Banks, Knight, of the 20th regiment; and Captain Irving, of the 70th regiment, as members for that court, assembled, and proceeded from day to day till the 12th of the same month.

“ Perhaps the decision of that enquiry, however inconclusive it might be, had sealed up my lips, had not an injury which it was productive of, and which merged all inferior delinquencies, been the consequence of it. But the paltry consideration of personal wrong shrinks when put in estimation with the crime which was perpetrated, and of the consequences of which I now complain; a crime as big with ruin as it was replete with baseness and treachery—a crime as subversive of military subordination, as destructive of civil or social order—a crime which has drawn me forward as a prosecutor in the courts of law where the offenders were convicted and punished—a crime, for not having used his utmost endeavours to deliver up the perpetrators, of which I this day accuse the gentleman at the bar.

“ To sustain this accusation, I shall adduce such proofs as shall leave no doubts upon your minds, that Lieutenant-Colonel John Campbell did not only wilfully neglect to deliver up—did not only avoid using his utmost endeavours to deliver up—but that, on the contrary, he did use his utmost endeavours to screen and protect these offenders, against the law of the land, from being delivered up to the civil magistrate.

“ Before I go into the detail of what I mean to lay in proof before you; permit me as matter of inducement, to state some preceding facts, which in order to make this accusation intelligible, it will be necessary for me to state to you. In this statement, I shall endeavour to be as short as possible; for I shall industriously avoid every thing which may tend

to draw this trial into length, or occupy your time, which may be otherwise employed ; though I hesitate to pronounce, whether it could be spent in a more useful public duty.

“ During the course of the inquiry, to which I have before alluded, frequent informations had been given to me, that a conspiracy had been formed against my life, by the soldiers of the 9th regiment of foot. Unconscious of any injury I had ever done to the soldiery, I could not easily give credit to it :—but when I was informed that an officer of very high consideration was at the head of it, I hesitated not to disbelieve it. I could not think a man elevated in rank, of honourable situation and connexion, could foster assassination, or encourage disorder. I could not think that a man of a military profession could possess an unmilitary mind. Open and unsuspecting, I never thought treacherous conspiracy could mix itself with a Soldier’s character.

“ But the repetition of this intelligence, though it did not alarm me ; yet, lest I should seem to act without any precaution, made me to communicate to Major General Patterson, that I had been informed, that “ if I continued to attend on the Court of Inquiry I should become a sacrifice to the malignity of a conspiracy formed against my life. The General, though he could have hardly given credit to such information, gave me the most solemn, and to me the most satisfactory assurances of his protection, against any attempts which might be made upon my person, and of his exertions to prevent the perpetration of an act of such deliberate and abominable baseness.

“ I had too late paid any attention to the information which I had received, or perhaps rather the plot of the conspirators was too maturely ripened for prevention, or for my application procuring me protection or preservation. Prompted to outrage, excited

cited to violence, the ministers of others revenge attacked me; and on the 12th of November 1787, I became a spectacle of pity and compassion, and an example of savage and ferocious barbarity. I have called the men who thus attacked me the ministers of others revenge—they were soldiers of the 9th regiment of foot.—My habits of life could not have given me an opportunity of ever exciting resentment in the breast of any of them.—One only of these ruffians belonged to the company in which I had the honour to be a Lieutenant; and even to him, I call Heaven and God to witness, I am unconscious of offence by action or intention.—Nay, I have more than once, saved the ungrateful wretch from corporal punishment.

“ Ferocious as their barbarity, savage as their actions, yet they did not equal their intentions, and that Providence which heretofore protected me in the field, from the arms of the enemies of my country, preserved my life from the attacks of those, who had been my fellow soldiers, and has since assisted me to become the instrument of their punishment, who had intended to make me the victim of their malice. The record of the conviction of these men will prove the injury sustained by me—and it will perhaps appear a little extraordinary that the name of Mr. William Keightley, the Adjutant of the Regiment, whom Lieutenant Colonel John Campbell, on the Court of Inquiry, dignified with the epithet of his faithful friend, and for whom he declared, he had purchased the Adjutancy, and which purchase money he then released him from, is to be found in that record.—Strange to say, that original habits are not to be forgotten!

*Quo semel imbuta recens, servabit Odorem
Testa diu!*

I shall not press any thing more upon Mr. Keightley's character, nor add a trait to it, save observing that

that he with many of those, who have been convicted of this honourable and heroic exploit, had also the honour of being the principal witnesses produced by Lieutenant Colonel John Campbell upon that inquiry.

“ Now suffer me to pause—and permit me to say, that if ever there were a prosecution, which may be suggested to be of popular utility, it was that which I carried on against these men ; for if the military, whose intention, at all times, but especially in times of peace, is to be subordinate to the Civil Power, and to be assistant in effecting good order and regularity, are to be the authors of disorder and anarchy, and applied as the instruments of malicious revenge ; which of you can say, that he shall be safe from hired outrage, from purchased assassination ?

“ The charges against Lieutenant Colonel John Campbell, have been stated to the Court by the Judge Advocate. I shall now state the grounds on which I mean to support these charges.

“ In order to bring these offenders to justice, an application was made to Lieutenant Colonel John Campbell to have them delivered up to be tried.— But these men, who, exasperated at my having complained of Lieutenant Colonel John Campbell, and who therefore had attempted my life, were returned by him, as having deserted from the regiment—of adding the perjured infamy of that crime to their civil delinquency.—But what in truth was the fact?— It will appear to you in evidence, that as soon as they had performed this heroic exploit, they became as timid as they had been treacherous ; and fearful of that public justice which they had so wantonly offended, wished to effect their escape by concealment. The power that excited their attack, endeavoured to cover their retreat ; and Lieutenant Colonel John Campbell, who had returned these men

as deserters, had them protected and supported on board the Zebra sloop of war.

" It will also appear that these deserters—(deserters indeed, from justice, from honour, and from courage) were at the very time they were so returned, kept in a public house, at the expence of Lieutenant Colonel John Campbell; that they spoke to, and conversed with him, and that they demanded money from him; and the only rebuke they received from their Lieutenant Colonel, for their riot and desertion, was for their speaking to him in a place of so public resort as the king's highway.

" I will not protract the statement of the evidence. It consists of the testimony of many witnesses, who will prove the same facts or circumstances, corroborating the same facts, and I can have but little doubt, that if the facts are proved, that you will—nay, that you must find Lieutenant Colonel John Campbell guilty of the charges alleged against him.

" I trust, in the issue of this business, that I shall be felt to have done my duty to the public as a man of honour, and a citizen, as one jealous for the protection of public peace, and zealous for the correction of all disorder.—You are to determine, whether an officer of the army shall defeat the ends of justice, and be ancillary to the malignity of private resentment. Whether he who is, what in law is termed, an accessory, at least after the fact, and who comforted and abetted the most vile and coward-like assassins, shall elude punishment.—It was my duty to bring the victim, and bind him to the horns of the Altar.—It is yours to shew whether you will suffer the sacrifice to Justice to escape."

Major

Major General *Patterson* being called on as an evidence in behalf of the prosecutor, and duly sworn.

Question by Mr. Gwynne. Did you command the troops quartered at Cork, on the 12th of November 1787, and how long before?

A. I did command them then, and for some time before.

Question by Ditto to Ditto. Did you hear of an outrage committed on me at Cork, on the 12th of November, 1787?

A. I did immediately after the committal of the outrage.

Question by Ditto to Ditto. Did not Colonel Campbell command the 9th Regiment in Cork at that time?

A. He did.

Question by Ditto to Ditto. Did I give you any intimation of an assault I was informed was intended against me before it happened?

A. You did.

Question by Ditto to Ditto. What conversation happened between you and me at the time I gave you such intimation?

A. I observed to Mr. Gwynne, that I thought his apprehensions groundless, from the good opinion I had of the discipline of the army.

It being three of the clock, the Court adjourned till to-morrow morning at eleven o'clock.

TUESDAY the 22d JULY, 1788.

[11 o'Clock.]

The Court met pursuant to adjournment, and Major General *Patterson* already duly sworn, being again called on,

Question by Mr. Gwynne. Did the Civil Magistrates particularize to you any person or persons, accused of having committed an assault on me, on the evening of the 12th of November 1787, or on the next morning?

A. I cannot charge my memory with the Civil Magistrates having particularized any person.

Question by Mr. Gwynne. Was you applied to by the Civil Magistrates at any time and when, relative to the persons accused of having assaulted Mr. Gwynne on the 12th of November, 1787?

A. I was repeatedly applied to.

Question by Ditto to Ditto. Did you in consequence of such application to you by the Civil Magistrates, apply to Colonel Campbell to have the men accused of such assault given up to the Civil Magistrates?

A. I did.

Question by Ditto to Ditto. What answer did Colonel Campbell give to that application?

A. Colonel Campbell's answer was, that they either were or should be immediately confined.

Question by Ditto to Ditto. Were any, if any, and how many confined?

A. None; they were reported to me as deserted.

Question by Ditto to Ditto. How soon after Colonel Campbell promised to have them confined, did he make the report of their having deserted?

A. As soon as Colonel Campbell could go to his regiment, and return to make a report.

Question

Question by Mr. Gwynne. Did you apply to Colonel Campbell for any particular man or men by name, in consequence of the requisition of the Civil Magistrates to him?

A. No.

Question by Ditto to Ditto. Do you recollect to have written any letter to the Civil Magistrates, in consequence of their requisition?

A. I do not recollect to have written any letter to the Civil Magistrates.

Question by Ditto to Ditto. What men did Colonel Campbell report to have deserted?

A. All the men accused of the crime.

Question by the Prisoner. Do you recollect that in consequence of the outrage committed on the 12th November, 1787, two separate applications were made to you by the Mayor and Sheriffs of Cork?

A. I do.

Question by Ditto to Ditto. Were the men required in consequence of the first application delivered up by me to the Sheriffs of the city of Cork?

A. They were.

Question by Ditto to Ditto. Do you know that I attended with the Sheriffs and lodged the men so given up in goal.

A. I do.

Question by Ditto to Ditto. Do you know of the Civil Magistrates of the city of Cork having upon that occasion, or any other, complained of my conduct?

A. No; on the contrary, the Civil Magistrates repeatedly expressed their approbation of your conduct, and obligation for the assistance you gave them upon that particular occasion.

Question by Ditto to Ditto. Were you satisfied with my behaviour and conduct as an Officer while I was under your command?

A. Perfectly so.

Question

Question by the Court. Do you know that Colonel Campbell concealed, protected or supported any of the soldiers concerned, or accused of being concerned, in the assault on Mr. Gwynne?

A. I do not.

Colonel Lind, of the 20th Regiment of Foot, being called on by the Prosecutor, and duly sworn,

Question by Mr. Gwynne. Was you in Cork on the 12th of November, 1787, when I was assaulted by a number of soldiers in that city?

A. I was.

Question by Ditto. Did I make any application to you about assisting me to take the men up?

A. You did by letter.

Question by Ditto. What did you do in consequence of such application?

A. I waited on General Patterson with the letter.

Question by Ditto. In consequence of your waiting on General Patterson, what answer did you send me?

A. I cannot recollect exactly the words; but the purport of it, as near as I can recollect, is as follows:—"I have it in command from General Patterson to inform you, that he has read your letter to me, and desired me to inform you, that as the civil law is now open to you, he desires not to be troubled any more on the subject."

Question by Ditto. Do you recollect being president of a court of enquiry, in the month of January last, at Cork?

A. I do recollect being president of a court of enquiry about that time, at Cork.

Question by Ditto. Do you recollect any conversation which passed between you and Lieutenant-Colonel Campbell, with regard to the outrage committed

mitted on me, and of the men charged with committing it, about that time?

A. I do not recollect having any particular conversation with Lieutenant-Colonel Campbell, about that period.

Question by Ditto. Were you present at any time that Colonel Campbell had any conversation with any other person, and if any, with whom, with regard to the persons accused of assaulting me?

A. I do not recollect that I was.

Question by Ditto. Were you present when any conversation passed between Colonel Campbell and any person whatsoever, about any men of the 9th regiment being aboard the Zebra sloop of war, or on board any other King's ship?

A. I do not recollect to have heard Colonel Campbell, directly or indirectly, mention any thing concerning any men of the 9th regiment on board the Zebra, or any other King's ship.

Question by the Prisoner. Do you know of two separate applications having been made by the Civil Magistrates of Cork, for the giving up of the men charged with assaulting Mr. Gwynne?

A. I recollect one made to me, as commanding officer of the garrison, for three men of the 9th regiment, by the Sheriff, that were confined.

Question by the Prisoner. What was done in consequence of that application?

A. When the Sheriff came up to me at the parade, and made a demand of the three men of the 9th regiment that were confined, I went with him to the Main-guard, expecting to find them there, in order to deliver them up to the Sheriff. Not finding them there, I went to Colonel Campbell, who was walking on the Mall, and asked after the men. Colonel Campbell told me they were in the Barrack Guard-room of the 9th regiment, and that he would go up to the Barrack himself, and order them to be

be delivered to the Sheriffs, observing that the Sheriffs and I should follow him up to the Barrack without a guard, for fear of any riot: on our arrival at the Barrack, Colonel Campbell, who was there, took the men out of the Guard-room, and delivered them to the Sheriff in my presence, and said he would go with them to the gaol himself, and see them committed: and Colonel Campbell went forth with the Sheriffs for that purpose, as I apprehend.

Question by the Prisoner. Do you know of my having at any time refused to assist the Magistrates of the city of Cork?

A. You never did, that I heard of.

Question by the Prisoner. Was it not the custom when a soldier was accused of any crime by the Civil Magistrates, to confine such soldier in the Guard-room of the regiment to which he belonged, and to keep him there, until an application was made by the Magistrates to deliver him up?

A. In crimes merely regimental the soldiers were confined in the Guard-room of the regiment; but for crimes of a public nature, it is usual to confine them in the Main-guard.

Question by the Court. In how many days, or in how long a time after the outrage committed on Mr. Gwynne, did you go to General Patterson, with the letter from the Prosecutor, to which you had the answer mentioned in your former evidence?

A. As well as I recollect, four or five days, but the date of the letter will best shew.

Question by Mr. Gwynne. How many days after the assault committed on me, were the three men delivered up to the Sheriffs?

A. I do not recollect the exact time, but I believe it to have been the day after the assault was committed, or the day after that.

Question by the Court. Were those others delivered up on the first application to you for that purpose?

A. They were.

Question

Question by the Court. Do you know that Lieutenant Colonel Campbell, either by connivance or otherwise, concealed, protected or supported, any of those soldiers, concerned or accused of being concerned in the assault on Mr. Gwynne?

A. I do not.

Captain *Charles Boyle*, of his Majesty's ship the *Zebra*, being called on by the Prosecutor, Mr. Gwynne, and duly sworn; and it being three of the clock, the Court adjourned till to-morrow morning at 11 o'clock.

WEDNESDAY the 23d, JULY.

[11 o'Clock.]

The Court met pursuant to adjournment.

Mr. *John Burton*, First Clerk in the Adjutant General's Office, being duly sworn, produced to the Court five monthly returns of the 9th regiment of foot, for the months of September, October, November, December and January, and a certified copy of the embarkation return of the said regiment, and duly authenticated the same to the Court.

Mr. *Matthew Handcock*, Deputy Muster Master General, being duly sworn, produced and proved the Muster Rolls of the 9th regiment of foot, for three months, ending the 31st December, 1787, and also, the Muster Rolls taken at the embarkation of the said regiment, and duly authenticated the same to the Court.

The Court having asked Mr. *Gwynne* was he satisfied with the manner in which the Court has proved the authenticity of these documents; or did he chuse to ask any questions to prove them better—and Mr. *Gwynne* replying, he was satisfied,

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The Court then proceeded on the examination of Captain Charles Boyle, already duly sworn.

Question by Mr. Gwynne. Did you command the Zebra sloop of war in the months of November, December, and January last?

A. I did.

Question by Mr. Gwynne. Were there any soldiers of the 9th regiment on board your vessel during that period?

A. There were nine soldiers, I have since known them to be of the 9th regiment; but I did not receive them on board as soldiers of the 9th regiment.

Question by Ditto to Ditto. Did you know that they belonged to the 9th regiment, before they were taken from on board your vessel?

A. I had heard by report, that they were of the 9th regiment, but not from any authority.

Question by Ditto to Ditto. For what purpose were those men put on board?

A. To be taken care of, until the transports should arrive at Cork, for the embarkation of the regiments destined for the West-Indies

Question by Mr. Gwynne. What reasons were assigned to you, why those men did not remain with their regiment?

A. That they would be a loss to his Majesty's service, if not in a place of safety.

Question by Mr. Gwynne. How did you understand that they would be a loss to his Majesty's service, unless they were put on board?

A. That I was not able to judge of; my care was to prevent their going from the Zebra, without proper authority.

Question by Ditto to Ditto. In what light did you consider them on board?

A. As soldiers of the king's.

Question by Ditto to Ditto. Was it by Major Dalrymple that those men were put on board?

[Here

[Here the Court interposed, and objected to the question being so put.]

Question by Mr. Gwynne. By whose directions } *fair qu*
were these soldiers so put on board the Zebra?

Here an objection was made to that question being so put, by a member of the Court, and the Judge Advocate.

It was then proposed to the Prosecutor by the Court, that instead of putting the question in those general terms, he should put the following question, viz.

Had Lieutenant-Colonel Campbell, or any person to your knowledge, by his orders, communication with those men; or were they put on board by the order or connivance of Lieutenant-Colonel Campbell?

The prosecutor desired leave to abide by the question as put by himself.

The Court was then cleared, and being again opened, the Prosecutor was called in, and informed by the Judge Advocate, that his question being in the opinion of the Court too general, they would not allow it to be so put. } *unfair*
discuss

Question by Mr. Gwynne. Were those soldiers that were on board in any uniform or not?

A. No particular uniform whatever.

Question by Mr. Gwynne. Had they on king's cloathing?

A. Some had as I believe, and some had not; but I never saw all the men that were on board the Zebra.

Question by Ditto to Ditto. What regiments cloathing had those men which you saw?

A. I don't know.

Question by Mr. Gwynn. How were they subsisted?

A. By the Purser of the Zebra.

Question by Ditto to Ditto. By whom were they paid?

A. I don't know,

Question by Ditto to Ditto. To whom was their provision charged?

A. To Government.

Question by Mr. Gwynne. Were they on board as prisoners?

A. By no means.

Question by Mr. Gwynne. Who assigned as a reason, that his Majesty's service might suffer, if those men were not in a place of safety?

A. Major Dalrymple of the 49th regiment.

Question by Mr. Gwynne. Were those reasons given at the time that the application was made to put them on board, or before or after?

The Court was now cleared by desire of a member; the Court was accordingly cleared, and being again opened, the Prosecutor was desired to proceed.

A. It was on a conversation on shore, before the men were on board.

Question by Mr. Gwynne. Were not those men taken from on board your ship, in consequence of being accused of having assaulted Mr. Gwynne?

A. They were given up by my order to the Civil Magistrates of Kinsale, being accused of an assault by Mr. Gwynne.

Question by Mr. Gwynne. Did you know of any charge being against them for desertion, at the time of delivering them up?

A. I did not know them to be deserters. The summons I received from the Civil Magistrates, was by letter, as I don't exactly recollect the words of the letter, I think the sole purport of it was, their having committed an assault on Mr. Gwynne, in the city of Cork.

Question

Question by Mr. Gwynne. Was it publicly known in Kinfale, that those men were on board your ship?

A. I am pretty sure it was, no means having been taken to conceal them.

Question by Mr. Gwynne. Did the Civil Magistrates letter particularize them to be men of the 9th regiment?

A. I believe it did.

Question by Mr. Gwynne. Do you recollect any conversation you had with Sir James Carthy, in which you expressed your surprize, that Colonel Campbell had not returned you thanks for taking care of those men?

A. So far from it, that Sir James Carthy is a gentleman I don't recollect ever to have spoken to.

Question by Mr. Gwynne. Had you any such conversation with Mr. Head, of Kinfale, a Naval Officer?

A. I do not recollect any such conversation with Mr. Head.

Question by Ditto to Ditto. Did you ever consider Colonel Campbell to be under an obligation to you, for the care of those men?

A. I did not consider Colonel Campbell under any obligation to me on that account; but that after the men had been delivered up to the Civil Magistrate, and knowing them to be of the 9th regiment, I might have said, that if Colonel Campbell had known they were on board the Zebra, that he ought to have considered himself obliged to me.

Question by Mr. Gwynne. Did the person who applied to you to have the men put on board, inform you that Colonel Campbell knew of it?

A. He did not.

Question by the Court. To your knowledge, were those soldiers put on board your ship, by the directions of Colonel Campbell, or by any other person by his orders?

A. Not to my knowledge.

Question

Question by the Prisoner. Do you know that I interfered in any shape whatever, with regard to those men on board your ship?

A. Not to my knowledge.

Mr. ~~James~~ Henderson, Purser of his Majesty's ship the Zebra, being called on by the Prosecutor, and duly sworn, and it being three of the clock, the Court adjourned till to-morrow morning at eleven o'clock.

THURSDAY the 24th JULY, 1788.

[11 o'Clock.]

The Court met pursuant to adjournment, and Mr. ~~James~~ Henderson being called in, already duly sworn.

Question by Mr. Gwynne. Were you Purser of the Zebra in the months of November, December, and January last?

A. I was.

Question by Mr. Gwynne. Is it the duty of a Purser to enter on his books, the name and description of each person coming on board his vessel, and who draws provisions?

A. It is not the duty of a Purser, to enter the description of any man on his books, but the name of the person simply.

Question by Ditto to Ditto. Do you recollect any soldiers coming on board your vessel, within the three months before mentioned, of the names of Robert Farquer, Mathew Dibel, John Cooper, David Ransom, Thomas Hiland, Joseph Burton, Isaac Rhewbottom, Francis Trounfel, William Moore, Robert Auger, and Samuel Orms?

A. There

A. There were nine men on board; I recollect some of their names, viz. Mathew Dibel, John Corker, David Ransom, (Isaac Rhewbottom, I am not positive as to the latter) and William Moore, as to the rest I cannot recollect.

Question by Mr. Gwynne. At whose expence were they maintained, while on board?

A. At Government's.

Question by Mr. Gwynne. Were they considered as foldiers of his Majesty's land forces?

A. They were.

Question by Mr. Gwynne. Did you know the regiment they belonged to, while they were on board the Zebra?

A. I did not, until the day they were taken out of the ship.

Question by Ditto to Ditto. What was the cause of their being taken from on board the Zebra?

A. Their having been charged with committing a riot in Cork.

Question by Ditto to Ditto. Was it publickly known in Kinsale, that they were on board the Zebra?

A. I don't know, whether it was or was not.

Question by Ditto to Ditto. From the discipline on board a King's ship, would men be given up as soon, being charged for desertion as any other crime?

A. In my opinion they would.

Question by Ditto to Ditto. Were these men considered as deserters, while on board the Zebra, to your knowledge?

A. I cannot say, whether they were or not.

Question by Ditto to Ditto. Did you consider them as deserters during that period?

A. I did not.

Question by the Prisoner. Do you know of my having any concern in putting those men on board the Zebra, or with them while on board?

A. I do not.

Benjamin

Benjamin Warrel, private soldier of the 20th regiment of foot, called on by the Prosecutor, and duly sworn.

Question by Mr. Gwynne. Was you in Cork when I was assaulted by some soldiers of the 9th regiment?

A. I was.

Question by Ditto to Ditto. Did you see the assault?

A. I did.

Question by Mr. Gwynne. Did you know the men that were accused of committing that assault?

A. I knew five; namely, Robert Auger, William Moore, David Ransom, Joseph Burton, and Thomas Hyland.

Question by Ditto to Ditto. Did you see these men afterwards in the Barracks of the 9th regiment?

A. I did, between the 12th of November and the 29th of said month, in the Barrack-room of the regiment.

Question by Ditto to Ditto. How often did you see them in the Barracks?

A. Seven or eight nights.

Question by Mr. Gwynne. Where were they in the day time?

A. About two miles distant in the country, in different houses.

Question by Mr. Gwynne. Why did they keep in the country?

A. For fear of being taken by the Civil Magistrates, for assaulting Mr. Gwynne.

Question by Mr. Gwynne. Was there any search made after them?

A. There was.

Question by Mr. Gwynne. By whom?

A. By Constables.

Question by Mr. Gwynne. By whom were they protected, when such search was made?

A. By

A. By a party of the 9th regiment.

Question by Mr. Gwynne. By whose orders were they protected?

A. I do not know.

Question by Ditto. Were these men deserters at that time?

A. I don't know.

Question by Ditto to Ditto. Do you know of any attempt having been made to take them up by the 9th regiment at that time, for desertion?

A. I do not.

Question by Mr. Gwynne. Do you know whether Colonel Campbell made any attempt, or used any means, to take up those men while they frequented the Barracks at night or in the day time, while scattered in the country?

A. I don't know that he did.

Question by Mr. Gwynne. Was it publicly known in the 9th regiment, that they frequented the Barracks by night?

A. By those men who were in the rooms with them.

Question by Ditto to Ditto. Was it known by the non-commissioned Officers of those rooms that the men frequented the Barracks?

A. It was to one non-commissioned officer.

Question by Ditto to Ditto. Could they come in and out of the Barracks, without the knowledge of the centries at the Barrack-gate?

A. They might be disguised, and the centries not take notice of them.

Question by Mr. Gwynne. Were these men secreted by the non-commissioned officer you have mentioned, with the knowledge or connivance of Lieutenant-Colonel Campbell?

A. Not to my knowledge.

Question by Ditto to Ditto. Did those men receive any money from the regiment during the period of their being so secreted?

A. Not to my knowledge.

Question by Mr. Gwynne. Were they in regimentals or in other cloathing, when you saw them in the Barracks ?

A. They were in disguise.

Question by Ditto to Ditto. Did you see any of those men within the space of time you have before mentioned, in their regimentals, in the city of Cork ?

A. I did not.

Question by Ditto to Ditto. Did those men sleep in the Barracks, to your knowledge ?

A. They continued in the rooms all night.

Question by Mr. Gwynne. Did you see those men in public houses in Cork, within the period before mentioned ?

A. I did frequently, on different nights.

Question by Mr. Gwynne. In how many days after the 12th of November, did you see them in those public houses ?

A. Two of them on the morning of the 13th of November, Thomas Hyland and Robert Auger.

Question by Mr. Gwynne. Do you know of the Barrack gates being opened earlier than usual, to let them out in the morning ?

A. I never saw the Barrack gates opened to let them out, as I was in bed when they left the room.

Question by Ditto to Ditto. Did you mess and sleep in the room where those men stayed at night ?

A. I did where three of them were.

Question by Mr. Gwynne. Did those men mess in the room with you ?

A. Before the 12th of November they did, but after that they did not.

Question by the Court. Was it known, to your knowledge, that the rest of the men of the regiment knew of those men being in their rooms ?

A. I do not know.

Question by Mr. Gwynne. Do you know of any other men of the 9th regiment being acquainted with

with those men being in the rooms you mentioned, except the men that were in the room with them?

A. I do not know.

Question by the Prisoner. Did you ever report to me that those men were in disguise, or protected from the Civil Magistrates by the soldiers of the 9th regiment?

A. I did not know.

Question by the Court. Did those men return to the Barracks before taptoo roll-calling?

A. They did sometimes before and sometimes after.

Question by the Prisoner. Did I live in the Barracks during the period before mentioned?

A. Not to my knowledge.

Question by the Court. Did you ever understand that Colonel Campbell knew of those men being concealed in the Barrack.

A. I do not know.

Mr. Patrick Crowley being called on by the Prosecutor, and duly sworn.

Question by Mr. Gwynne. Where do you reside?

A. Within a mile of Kinsale, at Martin Kennefeck's, at Chune-cade.

Question by Mr. Gwynne. Do you know of any soldiers of the 9th regiment frequenting Martin Kennefeck's house, in the months of November and December last?

A. I do.

Question by Mr. Gwynne. Do you recollect their names?

A. I do of three, viz. Matthew Dibel, Samuel Orms, and Isaac Rhewbottom.

Question by Ditto. On what account were they there?

D 2

A. They

A. They told me they came there in order to screen themselves from Mr. Gwynne's apprehending them.

Question by Mr. Gwynne. Do you recollect the names of any of the men that came to see the men that lodged at Martin Kennefeck's house?

A. I do, the names of two, viz. Moore and Auger.

Question by Ditto. Did they appear to be in any dread of being taken by their officers, and punished for absenting themselves from their regiment?

A. They did not.

Question by Mr. Gwynne. What is your reason for thinking so?

A. First they told me so themselves, and secondly, because I saw them speak to men of the regiment; and further cause of knowledge I have not.

Question by Mr. Gwynne. Do you recollect to have seen an armed party of the 9th regiment called in by those men before mentioned, to Martin Kennefeck's house to drink?

A. I do.

Question by Ditto. Were that armed party strong enough to take those men to Cork?

A. I believe they were.

Question by Ditto. Did they shew any fear when any officer or soldier (the 9th and 49th excepted) passed that road?

A. They did.

Question by Ditto. Did they shew any fear when any of the 9th or 49th regiment passed that way?

A. They did not.

Question by Ditto. Do you remember their secreting themselves on a man of the 20th regiment coming into the house?

A. I did see them secrete themselves from a soldier, but what regiment he belonged to I do not know; but the soldier told me he did not belong to

Colonel

Colonel Campbell's regiment, and that he did belong to a regiment then quartered in Cork.

Question by Mr. Gwynne. How did they procure money to subsist themselves, while at Martin Kennefeck's house?

A. I do not know farther, than that they told me they were supplied with money by the Serjeant-major of the 49th regiment.

Question by Ditto. Did they ever go publickly to Cork or Kinsale, from Martin Kennefeck's house?

A. They went publickly to Kinsale, but when they went to Cork, they went by night, as they professed their intention to be.

Question by Mr. Gwynne. Did they at any time wear the regimentals of the 9th regiment?

A. They did.

Question by Ditto. Did they go to Kinsale at any time with the regimentals of the 9th regiment?

A. They left the house with the regimentals of the 9th regiment with an intention, as they said, of going to Kinsale, and when they came back they told me they were there.

Question by Mr. Gwynne. Did those men point out Colonel Campbell on the road, and did one of them run after him to speak to him?

A. One man did point him out to the rest, and one of them, namely, Samuel Orms, ran after him.

Question by Mr. Gwynne. Did they throw themselves in the way of the person they said was Colonel Campbell?

A. They came to the door, as the gentleman they said was Colonel Campbell was passing.

Question by Ditto. Have you seen Colonel Campbell since that time?

A. I saw him yesterday or the day before in Court, but never before to my knowledge.

Question by Mr. Gwynne. Do you believe the person pointed out by the men passing by Kennefeck's house, to be Colonel Campbell?

A. I do

A. I do not know farther than I was told by the men.

Mr Gwynne being asked if he had any more questions to propose to the Witness, he answered he had not. Colonel Campbell was going to proceed in his cross-examination; but it being three of the clock, the Court adjourned till to-morrow morning at eleven o'clock.

FRIDAY the 25th JULY, 1788.

[11 o'Clock.]

The Court being met pursuant to adjournment, and Mr. Gwynne requesting to ask some further questions of the witness, Mr. Crowley; then the Court remarked, that as he had yesterday closed his examination, it became necessary to ask Mr. Gwynne, if he had any private conversation with the witness since yesterday. Mr. Gwynne acknowledged he had dined with the Witness. The Court was then cleared, and being again opened, Mr. Gwynne was informed, that it was necessary that he should be sworn, with respect to what private conversation he had with the Witness after the rising of the Court yesterday. Mr. Gwynne was accordingly sworn, and being desired to relate, how he came to dine with the Witness pending his examination, he answered "that they dined and lodged together in the same house."

Question by the Court to Mr. Gwynne. Did any person dine in company with you beside Mr. Crowley yesterday?

A. There did.

Question

Question by the Court to Mr. Gwynne. Who were they?

A. Mrs. Fitzmaurice.

Question by the Court to Ditto. Did any other person dine with you yesterday?

A. I cannot be positive to any other person dining in company with me yesterday, but there is a gentlewoman who lodges in the house, that sometimes dines in company with me; but whether she dined with us yesterday or not, I cannot be positive.

Question by Ditto to Ditto. That gentlewoman excepted, can you be positive that no other person except those you have mentioned, dined in company with you yesterday?

A. I am.

Question by Ditto to Ditto. Did Mrs. Fitzmaurice sit with you and Mr. Crowley after dinner until you broke up?

A. She did, until within five or ten minutes, as I did not sit to drink.

Question by Ditto to Ditto. Did Mr. Crowley and you walk out together after dinner?

A. We did.

Question by Ditto to Ditto. Were you and he alone?

A. We were.

Question by Ditto to Ditto. How long a time did you continue together?

A. I cannot exactly tell, we walked on the Quay towards the Marine Hotel, and back again to the house.

Question by Ditto to Ditto. Did you then separate?

A. We did soon after.

Question by Ditto to Ditto. Did you return into the house together?

A. We did.

Question by Ditto to Ditto. How long a time did you spend together after your return home?

A. I cannot

A. I cannot particularly say, but I recollect we were not alone from our return home to the house, until we separated.

Question by the Court to Mr. Gwynne. Where did you see Mr. Crowley again?

A. When I returned home for the evening.

Question by Ditto to Ditto. Did you pass any time alone with Mr. Crowley, after your return home for the evening?

A. We went up stairs together, for we sleep upon the same floor.

Question by Ditto to Ditto. Did you meet on the foot of the stairs?

Here Mr. Gwynne wished to correct himself in his evidence; to the best of my recollection, I came into the shop, and after sitting down a while to rest myself, to the best of my recollection, I saw Mr. Crowley in a little parlour behind the shop. I went into that parlour, to take a candle, to go up stairs, and went up stairs accordingly to my own room. Mr. Crowley followed me, and sat down in the room until I undressed myself and went to bed.

Question by Ditto to Ditto. When did you see Mr. Crowley, the first time this morning?

A. Between eight and nine; he came into my room while the Hair-dresser was with me.

Question by Ditto to Ditto. Did you breakfast together?

A. We did not.

Question by Ditto to Ditto. Did any thing relative to the matter now before the Court pass directly or indirectly, between you and the Witness, since the Court's adjournment yesterday?

A. He asked me whether I was to ask him any more questions. I told him it was improper I should have any conversation with him about it.

Question by the Court to Ditto. Was that all that passed upon the subject?

A. All that I recollect.

Question

Question by the Court to Mr. Gwynne. You know then that it was an improper thing to hold private communication or conference with a Witness pending his examination?

A. It was for that reason I gave him the answer I did.

Question by the Court to Ditto. How came you by dining with this gentleman, and walking with him in the evening, to lay yourself open to be intruded on by such conversation?

A. Because I live in the same house, and could not help it, and with regard to walking out together, I chose to take a walk, and I suppose he chose the like.

Question by the Court to Ditto. Was it by reason of your having closed your examination yesterday, that you thought there was no impropriety in dining and walking out with the Witness?

A. I thought no impropriety in dining or walking with the Witness, as we lived in the same house together; and I thought at that time I had no further questions to ask him; but this morning I recollected I had some questions to ask him, which I had yesterday forgot.

Question by Ditto to Ditto. What street did you dine in yesterday?

A. In Exchequer-street.

Question by Ditto. Did Mr. Crowley and you meet before dinner yesterday?

A. We went part of the way home together from this Court.

Question by Ditto. Did any other person walk with you?

A. No.

Question by Ditto. At what hour yesterday did you and Mr. Crowley go out together to walk?

A. Between five and six, I believe.

Question by the Court to Ditto. At what time did you go to dinner?

A. About four, that is the dinner hour in general.

Question by Ditto to Ditto. At what hour did you return home after walking in the evening?

A. I cannot be particular.

Question by Ditto to Ditto. When you went out after dinner, what streets did you pass?

A. Down Grafton-street and by the College, and down the Quays.

Question by Ditto to Ditto. If you had yesterday intended to put any more questions to the Witness, would you have passed the time you did with him?

A. I would not.

Question by the Court to Ditto. Was Mr. Brown, your assistant, present at any of the meetings you had with Mr. Crowley, after the breaking up of the Court yesterday?

A. He was not.

Question by Ditto to Ditto. Did you ever take down the questions you meant to put to Mr. Crowley, in writing?

A. A great many of them previous to the sitting of the Court.

Question by Ditto to Ditto. Had you yesterday the questions done in writing, you intended to put to Mr. Crowley?

A. I omitted asking three questions which I had down on my paper yesterday; but revolving the matter in my mind this morning, it came to my recollection that I had omitted them.

Question by the Court to Ditto. Does Mrs. Fitzmaurice, who dined with you yesterday, know that this Court Martial is sitting?

A. I believe she does.

Question by Ditto to Ditto. Was there a third person in company with you and Mr. Crowley, during your evening's walk yesterday?

A. There

A. There was not.

Question by the Court to Ditto. Did Mr. Crowley, after being stopped by you from speaking upon the subject again, attempt to enter on the subject?

A. To the best of my knowledge he did not.

Here Mr. Crowley was called in.

Question by the Court to Mr. Crowley. When you left Court yesterday, did you walk home alone or with any other person?

A. I walked home alone.

Question by the Court to Ditto. Did you go all the way home alone?

A. As far as the Gate of the Castle-Yard I walked with Mr. Gwynne.

Question by the Court to Ditto. When did you meet Mr. Gwynne?

A. About four o'clock, in the house where we dined.

Question by Ditto to Ditto. Who dined in company with you?

A. Mr. Gwynne, and two ladies.

Question by Ditto to Ditto. What are their names?

A. Mrs. Fitzmaurice and Mrs. Ashenhurst.

Question by Ditto to Ditto. Did those ladies or either of them, sit in company with you and Mr. Gwynne, till you broke up after dinner?

A. I think Mrs. Fitzmaurice did.

Question by Ditto to Ditto. Did Mr. Gwynne and you pass no time at talk together, after the ladies retired?

A. We did not.

Question by Ditto to Ditto. How did you pass your time after retiring in the evening?

A. Walking in the Green by myself, till near ten o'clock.

The Witness now recollecting himself, desired to add, that Mr. Gwynne walked for about three hundred

dred yards backwards and forwards about Clarendon-street, and Mr. Gwynne not finding himself disposed to walk, returned to his lodgings; and I was so near as to see him go into his lodgings, and I continued my walk for the remainder of the evening.

Question by the Court to Ditto. Had you any conversation whatever with Mr. Gwynne, relative to the matter now before the Court?

A. Not a word that I recollect, except Mr. Gwynne told me twice, that it would be very improper for him and the Witness to converse together, until he had been cross-examined by Colonel Campbell.

Question by Ditto to Ditto. When did Mr. Gwynne tell you that?

A. He told me in Court once, and once out of Court.

Question by Ditto to Ditto. Did you say any thing that occasioned Mr. Gwynne's saying so?

A. To the best of my knowledge, what occasioned Mr. Gwynne's saying so, was my asking him, what was the nature of a cross-examination, and how I should be examined.

Question by the Court to Ditto. Did you ask Mr. Gwynne, whether he intended to ask you any further questions?

A. To the best of my recollection I did, and to the best of my recollection he told me he did not.

Question by Ditto. Did you put that question to him after the rising of the Court yesterday?

A. I did.

Question by Ditto. Was it upon that occasion he mentioned to you, it was improper to say any thing respecting it?

A. I am not positive that it was then.

Question by Ditto. At what hour did you return home last night?

A. I believe about ten.

Question

Question by the Court to Ditto. Did you see Mr. Gwynne upon your return home?

A. I did; I came home first, and Mr. Gwynne came in soon after.

Question by Ditto. Had you any conversation with Mr. Gwynne, after his return home at night?

A. We had, but nothing respecting the Court-Martial.

Question by the Court, by desire of Mr. Gwynne, to Ditto. Do you recollect walking near the shipping, with Mr. Gwynne?

A. I do.

Question by the Court to Ditto. Had you and Mr. Gwynne no other conversation whatever since yesterday, respecting the business of this Court-Martial, but what you have stated to the Court?

A. If there was, I do not recollect it at present.

Question by the Court to Ditto. Have you had since the adjournment of the Court yesterday, any conversation with any other person respecting the business of this Court-Martial?

A. I had with the two ladies that lodge in the house.

The President addressed Mr. Gwynne in the following manner, "You have said, that if you thought you had any further questions to ask Mr. Crowley, you would not have had any private conversation with him. Do you now, after what you have heard, wish to put any further questions to him."—Mr. Gwynne answered, he did not.

Here Mr. Gwynne produced a parchment to the Court, which he asserted was a record of conviction of several people; and read a paper, of which the following is a copy; and he requested the Court would insert it on their proceedings.

As Mr. Henderson, the Purser of the Zebra, mentioned the names of several soldiers being kept on board

board the Zebra; and Mr. Crowley mentioned the names of other men, who were secreted in the house of Martin Kennefeck, and as Benjamin Warrel mentioned other men to have had access to the Barrack, I now tender as evidence of the accusation made against them, the record of the conviction of Robert Farquar, now or lately a Serjeant in his Majesty's 9th regiment of foot; of Stephen Reilly, now or lately a Serjeant in his Majesty's 9th regiment of foot; Matthew Dible, now or lately a Serjeant in his Majesty's 9th regiment of foot; John Cooper, now or lately a Serjeant in his Majesty's 9th regiment of foot; David Ransom, now or lately a soldier in said 9th regiment of foot; Thomas Hyland, otherwise Ryland, now or lately a soldier in said 9th regiment of foot; Joseph Burton, now or lately a soldier in said 9th regiment of foot; Isaac Rhewbottom, now or lately a soldier in said 9th regiment of foot; Francis Trounsell, servant to Lieutenant-Colonel John Campbell, of said 9th regiment of foot; Thomas M'Grath, now or lately a soldier in said 9th regiment of foot; William Moore, now or lately a soldier in said 9th regiment of foot; Samuel Orms, otherwise Owens, now or lately a soldier in said 9th regiment of foot; John Philby, now or lately a soldier in said 9th regiment of foot; and William Keightley, now or late Adjutant in said 9th regiment of foot—to prove that those men were accused of a riot and assault, with intent feloniously to kill and murder Daniel Gwynne, gentleman.

Question by the Court to Mr. Gwynne. What evidence do you offer of the authenticity of this parchment, purporting to be a record of conviction, at the Court of Gaol Delivery, of the county of the city of Cork?

A. I re-

A. I received it by post, accompanied by a letter from my attorney, at Cork; and he afterwards said, that he had it from the Clerk of the Crown, Mr. Chatterton.

Question by the Court to Ditto. Can you prove the Seal of the Court?

A. No.

Question by Ditto. Why did you not bring *viva voce* evidence of the authenticity of this parchment as was done in your presence, with regard to the documents of office required by you, from the War-Office, and Quarter-master General's-Office?

A. My attorney at Cork did not think it necessary, I therefore offer it to the Court.

Here the Court being cleared, and again opened, the Judge Advocate informed Mr. Gwynne, that the Court received it, and had inserted the paper he had given in on their proceedings.

It being ~~three~~ of the clock, the Court adjourned till to-morrow morning, at eleven o'clock.

SATURDAY 20th JULY, 1788.

[11 o'Clock.]

The Court met pursuant to adjournment, and *David Powell*, private soldier of the 9th regiment, being called on by the Prosecutor, and duly sworn.

Question by Mr. Gwynne. How long have you been a soldier in the 9th regiment?

A. Five years last March.

Question by Ditto. Was you with the regiment in Cork, in the beginning of last November?

A. I

A. I was.

Question by Ditto. Do you recollect a riot, outrage, and assault, committed on Mr. Gwynne, by a party of the 9th regiment of foot, on the 12th of November last.

A. I have heard of it only, for I was sick, and confined in the Hospital.

Question by Ditto. Do you know of any men being tried for it afterwards?

A. I do.

Question by Ditto. Do you know Mr. Keightly, the Adjutant of the 9th regiment?

A. I do.

Question by Ditto. Do you know Stephen Reilly, Robert Farquar, Matthew Dibel, John Cooper, David Ransom, Thomas Hyland, Joseph Burton, Isaac Rhewbottom, Francis Trounsel, Thomas M'Grath, William Moore, Robert Auger, Samuel Orms, and John Philips?

A. I do.

Question by Ditto. Do they belong to the 9th regiment?

A. They did and do now.

Question by Ditto. Were they tried for an assault upon Mr. Gwynne?

A. They were.

Question by Ditto. Did you see any of them, and which of them, after they were accused, and before they were tried, walking publicly in the streets of Cork?

A. I did not.

Question by Ditto. When were those men accused of committing this riot at Cork?

A. I don't know.

Question by Ditto. Did you see Robert Farquar, John Cooper, or Matthew Dibel, in the Barracks, in the month of November last?

A. I did not see them from the time they were returned as deserters, until I saw them in gaol.

Question

Question by Mr. Gwynne. Did you see all those men mentioned, in gaol?

A. I did not.

Question by Ditto. Do you ever recollect the Barrack gates being opened at any time at an unusual hour; and if you do, for what purpose were they so opened?

A. I know nothing about it; I never recollect their being opened at any unusual hour.

Question by Ditto. Did you ever tell me, that you frequently saw Robert Farquar, Matthew Dibel, John Cooper, David Ransom, Thomas Hyland, Joseph Burton, Isaac Rewbottom, Francis Trounfeld, Robert Auger, William Moore, and Samuel Orms, or some one of them—Auger, Trounfeld, Cooper, and Farquar, in particular, in the Barracks of Cork, after the search was made for them, and before they were delivered up to the Civil Magistrates?

A. I never did tell you so.

Question by Ditto. Had you any conversation with any officer, non-commissioned officer or soldier of the 9th regiment, respecting the testimony you were to give before the Court Martial?

A. I had not.

Question by Ditto. Did you see Moore in the Guard-house after he was brought from Kinsale?

A. I did not.

Question by the Prisoner. Did Mr. Gwynne send Joseph, a soldier in the 9th regiment, to you, to let you know he wanted to speak to you, soon after Mr. Gwynne came to Cork?

A. He did.

Question by Ditto. What did Mr. Gwynne say to you then?

A. Joseph and I went down to him, and Mr. Gwynne said to me, I am come to Cork to have Colonel Campbell tried by a Court Martial, and he

gave us a crown to drink his health, and bid us come to him again.

Question by the Prisoner. Did you see Mr. Gwynne again?

A. I did.

Question by Ditto. When you saw him again, what passed between you?

A. Joseph and I went into the room where he was, and he gave us half a pint of rum, and told us, that if we were seen coming to him, we would be played hell with, for that all Welchmen were hated in the regiment, and that it was time for us to be off from the regiment, and any time that you want to go, come to me for money.

Question by Ditto. Did Joseph desert?

A. He did,

Question by Ditto. Did Mr. Gwynne tell you where Joseph went to?

A. I went down to Mr. Gwynne's house, when I heard that Joseph was seen there, and asked Mr. Gwynne, whether Joseph was there or not; he said he was safe enough, and that he had given him money to take him to Waterford, where he was to embark for Milford, to go to his own country.

Question by Ditto. Did you receive money at any other time from Mr. Gwynne?

A. I did.

Question by the Court. What countryman are you?

A. A Welchman.

Question by Ditto. How much money did you receive the second time?

A. A Crown.

Question by Ditto. Was any other person present when you received the money?

A. No one but Mr. Gwynne and myself.

Question by Ditto. Did any other person (Joseph and you excepted) receive any money from Mr. Gwynne?

A. Not

A. Not to my knowledge.

Joseph Coffee, private soldier 20th Foot, being called on by the Prosecutor, and duly sworn.

Question by Mr. Gwynne. How long have you been in the 20th regiment?

A. Five years last March.

Question by Ditto. Were you in Cork with your regiment, in November last?

A. I was.

Question by Ditto. Do you recollect the riot and assault on Mr. Gwynne, on the 12th November last?

A. I recollect to have heard of a riot, but did not see it.

Question by Ditto. Do you know any of the soldiers accused of that riot?

A. I knew Robert Auger, a man that I heard was accused of the riot.

Question by Ditto. Do you know Adjutant Keightly of the 9th regiment?

A. I know him by sight.

Question by Ditto. Did you see Adjutant Keightly and Robert Auger, tried at Cork for the assault?

A. I did not.

Question by Ditto. Did you see Robert Auger in the streets of Cork after he was accused of the assault, and before he was taken up by the Civil Magistrates?

A. I did.

Question by Ditto. How long after the assault committed, was it you saw him?

A. I can't be certain.

Question by Ditto. To the best of your recollection, how long might it be?

A. I can't be particular, but it was some time between the riot and the assizes.

Question by Ditto. Was it by night or by day time?

A. It was in the morning before ten o'clock.

Question by Mr. Gwynne. Was you so near as to talk with him?

A. I was, but did not talk to him

Question by Ditto. Was Auger in his regimentals at that time?

A. He had a regimental jacket, waistcoat, and long trowsers, and wore his regimental cap, and wore no powder in his hair.

Question by Ditto. How near was the place you saw him to the Barracks of the 9th regiment?

A. I saw him at the corner of a lane at the back of the New Barracks, and he seemed very shy to me.

Question by Ditto. How near was that to the Old Barrack gate?

A. To the best of my opinion, from near sixty to seventy yards.

Question by Ditto. Did the 9th regiment live in the Old Barracks, at that time?

A. They did.

Question by Ditto. Were there any soldiers of the 9th regiment near Auger at that time?

A. No, there were not.

Question by Ditto. Did you see Auger more than once, during the time before mentioned?

A. I saw him twice that Saturday, but never saw him after until I saw him in gaol.

Question by Ditto. Where did you see him the second time?

A. I saw him on Barrack Hill, between five and six o'clock that evening.

Question by Ditto. How near was the place where you saw him on Barrack Hill, to the Barrack gate of the 9th regiment?

A. It might be about sixteen or seventeen yards from the Barrack gate.

Question

Question by Ditto. What conversation did you hear Auger hold with a soldier of the 9th regiment, or the soldier with Auger?

A. I did not hear Auger speak a word, but I heard the soldier say, Auger go about your business, this is no place for you, if you stay here, you will surely be taken up by Mr. Gwynne, or some of the town Constables.

Question by Mr. Gwynne. Where did Auger go upon that discourse?

A. He ran down a lane, and after that he turned a corner, and I saw no more of him.

Question by Ditto. Was this within view of the centinel of the 9th Barrack gate.

A. It was so dark, I am sure the centinel could not see him.

Question by Ditto. Mention how near you were to Auger, when you heard the soldier speak to him?

A. I suppose between two and three yards.

Question by Ditto. Are you sure that this was on a Saturday?

A. I am.

Question by the Court. Did you know that Lieutenant-Colonel Campbell knew of those soldiers being in Cork, or were they protected or concealed by him, or by his orders or connivance?

A. I do not.

Serjeant *Michael Stag*, of the 9th regiment, called on by the Prosecutor, and duly sworn.

Question by Mr. Gwynne. How long have you been in the 9th regiment?

A. About seventeen years.

Question by Ditto. Were you with the 9th regiment in Cork, in December last?

A. I was.

Question

Question by Ditto. Was William Moore delivered up a prisoner to the regimental guard of the 9th regiment, on the 29th December last?

A. He was.

Question by Ditto. Were you serjeant of the guard on that day?

A. I was.

Question by Mr. Gwynne. By whom was Moore delivered up to the guard?

A. By a party of foldiers from Kinfale (as I believe) who delivered him up to me.

Question by Ditto. How long was he in custody of the guard?

A. Some time between the hours of ten and twelve in the forenoon, to about the hours of six or seven in the evening.

Question by Ditto. Was he delivered up to any Civil Magistrates, on that day?

A. Not to my knowledge.

Question by Mr. Gwynne. Could he have been delivered up to the Civil Magistrates, without your knowledge, during the space of time you mentioned?

A. He could not.

Question by Ditto. Where was the Guard-room situated, that Moore was put in?

A. In the corner on the right-hand side, as you go into the Barrack gate.

Question by Ditto. Did you know at the time that Moore was accused of assaulting Mr. Gwynne.

A. I did not.

Question by Ditto. Who was Field Officer of the Garrison of Cork, for that day?

A. I do not recollect.

Question by Ditto. What was done with William Moore after he was put into your Guard-house?

A. I took him in charge myself, as a prisoner.

Question

Question by Ditto. To whom did you deliver him over afterwards?

A. To no person.

Question by Ditto. What became of him?

A. He deserted.

Question by the Court. Explain what you know of the prisoner's escape?

A. The prisoner asked liberty of me to go out on a natural call, and I gave him leave and sent a man with him armed with a bayonet: the man returned, and told me he was knocked down by the prisoner, and lost the prisoner, for which I confined the man.

Question by Ditto. What time was the Barrack gate usually shut in December?

A. At nine o'clock.

Question by Ditto. Could he from the situation of the Barrack, and the gate thereof, have escaped without passing by the sentinel placed there?

A. He could not.

Question by Ditto. When Moore was brought into your Guard-room, did he pass the sentinel then posted at the gate?

A. He did.

Question by Ditto. Is there any other entrance into the Barrack, than that one.

A. None to my knowledge.

Question by Ditto. Did the centry that was planted at the Gate, belong to your guard?

A. He did.

Question by Mr. Gwynne. Did Moore make any attempt to escape, prior to the time he accomplished it?

A. None.

Question by Ditto. Did the sentinel at the gate know that Moore was a prisoner?

A. He did.

Question

Question by Ditto. What was done to the man that went out with Moore, when he escaped in consequence of his having been confined by you?

A. He was brought to a Court-martial.

Question by Ditto. What was the event of the Court-martial?

A. I believe the man was acquitted.

Question by the Court. Have soldiers ever escaped over the walls of that Barrack?

A. I believe they might.

Question by the Court. Did you ever hear of soldiers having escaped over the walls of the Barrack?

A. I have.

Question by the Court. Was any report made by you to Colonel Campbell, on the arrival of Moore at your guard?

A. There was not.

Question by the Court. Was the escape of said Moore out of the Guard-house, effected either by the orders or countenance of Lieutenant-Colonel Campbell?

A. No, it was not.

Question by the Court. Did the Civil Magistrates of Cork, demand from you the delivery up of the prisoner, Moore, during the time he was confined in your Guard-room?

A. They did not.

Question by Ditto. Did you ever receive any orders from Colonel Campbell, not to deliver up Moore to the Civil Magistrates, though they should demand him?

A. I did not.

Question by the Court. At the time Moore was in your Guard room, did Colonel Campbell know of his being there?

A. He might; but I don't know whether he was at home that day or not.

Question

Question by Ditto. Do you know that Colonel Campbell knew that he was in the Guard-room?

A. I do not.

Question by Ditto. What crime was given in with Moore, at the time you received him at your Guard-room?

A. He was charged as a deserter.

Question by Mr. Gwynne. Was he charged with any other crime?

A. He was not.

Question by Mr. Gwynne. Did Colonel Campbell mess in the Barracks, at that time?

A. Sometimes he did, and sometimes not.

Question by Mr. Gwynne. Do you recollect, whether Colonel Campbell dined at the Barracks, on that day?

A. I don't know.

Question by the Court. Do you know by whom William Moore was taken up as a deserter?

A. I do not.

Question by Ditto. To what regiment did the party belong, that delivered up Moore to your guard?

A. I can't be certain, but I believe it was to a party of the 48th regiment.

Question by Mr. Gwynne. Did the party who delivered Moore up to you, tell you that Mr. Gwynne took him up for an assault upon him, and delivered him prisoner to the 48th regiment, at Charles Fort?

A. They did not.

Mr. Gwynne applied to the Court, and prayed, that they might please to order the Judge Advocate to write an official letter to the Mayor of Cork, to require him to transmit, in order to lay before the Court, a letter which Colonel Campbell had written to him, and which Mr. Gwynne asserted would be material in support of the prosecution. Colonel

G

Campbell,

Campbell, on hearing Mr. Gwynne's requisition, proposed that Mr. Gwynne might mention the purport of the letter, and if it was fairly stated, he had no objection to admit it.—But it being three of the clock, the Court adjourned, without coming to any further determination on Mr. Gwynne's requisition.

Adjourned to eleven o'Clock on Monday.

MONDAY the 28th JULY, 1788.

[11 o'Clock.]

The Court met pursuant to adjournment.—Mr. Gwynne, the Prosecutor, stated the purport of the letter * he mentioned on Saturday last, to have been an answer to a letter which Colonel Campbell received from the Mayor of Cork, wherein Colonel Campbell admitted, that a man of the name of Moore, who was charged with assaulting Mr. Gwynne, had been in custody of a regimental guard of the 9th regiment, and had made his escape by knocking down the centry; which Colonel Campbell admitted; notwithstanding which admission, Mr. Gwynne insisted on having the letter sent for.

The Court was cleared, and being again opened, the Judge Advocate informed Mr. Gwynne, that the Court would indulge him in his requisition.

* *The Judge Advocate wrote to the Mayor of Cork as required, but received no answer.*

Benjamin

Benjamin Leggatt, private soldier of the 9th regiment of foot, being called on by the Prosecutor, and duly sworn.

Question by Mr. Gwynne. Do you recollect that William Moore, of the 9th light company, was delivered up a prisoner to the 9th regimental guard, on the 29th December last?

A. I do.

Question by Ditto. By whom was he delivered up?

A. I can't say, for I was in my Barrack room when he was delivered up.

Question by Ditto. Did you return to the Guard-room, before the party who delivered him up went away?

A. I did not.

Question by Ditto. How long a time were you in your Barrack room, at the time you mentioned?

A. I am not positive; it might be an hour, or half an hour.

Question by Ditto. What was the occasion of your being so long absent from the guard?

A. I was getting my dinner at the time.

Question by Ditto. What time of day did you get your dinner, on that day?

A. I can't exactly tell, it might be two or three o'clock.

Question by Ditto. How long was Moore in the Guard-house, that day?

A. I can't tell, as I said before, I was not there when he was brought in.

Question by Ditto. How long was he there, after you first saw him?

A. I can't tell how many hours he was there.

Question by Ditto. Were there any other prisoners in the Guard-house, at the time Moore was there?

A. I don't know whether there was or not.

Question by Ditto. What orders did you receive while on centry, with regard to Moore?

A. I received no orders, as I was centry on the Barrack-gate, and not on the Guard-room door.

Question by Mr. Gwynne. Was you at any time, while Moore was in the Guard-room, centinel at the Guard-room door?

A. I was not, as it did not come to my turn.

Question by Ditto. What became of Moore?

A. To the best of my knowledge, he knocked down the centry, and made his escape.

Question by Ditto. Where were you at that time?

A. It rained, and I was in my centry-box.

Question by Ditto. Where was the centry-box situated?

A. Several yards from the Barrack-gate.

Question by Ditto. Did you hear any noise while you were in your centry-box, at the time you mentioned, and if you did, what was it?

A. I did hear a noise, I heard the centry who was knocked down, cry out to stop the deserter, who run past my post, and I pursued him several yards, as far as I durst go from my post; and the town being full of market people, he got amongst them, and I could see no more of him.

Question by Ditto. What time of day was this?

A. I can't rightly tell, it was in the evening—it was dark—you could not observe a man at any distance.

Question by Ditto. At what hour was you planted centry, at that time?

A. At five o'clock, that evening.

Question by Ditto. How long was you planted centry?

A. Two hours.

Question by Ditto. How long after you was planted, did you hear the noise?

A. I can't exactly say, it might be in one hour, or an hour and a half after.

Question by Ditto. How many attempts did Moore make, before he effected his escape?

A. None

A. None that I know of.

Question by Mr. Gwynne. What orders did you receive, when you were planted at that time?

A. To keep stragglers from the Barracks, and to keep my post quiet from any noise.

Question by Ditto. Did you, when you were planted at any other time, during that day, receive any other orders?

A. I did.

Question by Ditto. What were they?

A. To carry my arms to all Officers, and to present to the Field Officers.

Question by Ditto. Did you receive any other, beside these you have mentioned?

A. No, not at that post.

Question by Ditto. Did you at any other post, receive any other orders?

A. I was not centry at any other post.

Question by Ditto. Do you mean during that day and evening?

A. I was not centry but twice before Moore escaped, that evening.

Question by Ditto. Was you centry at any other post beside the Barrack-gate, before Moore's escape?

A. No, I was centry after.

Question by the Prisoner. Had Mr. Gwynne ever any conversation with you at Cork, relative to the evidence you were to give on this trial?

A. Yes, he had.

Question by Ditto. What was that conversation?

A. I met Mr. Gwynne, in Post-office lane, in Cork, about two o'clock; he asked me if I could resolve him one question. I asked him what it was; he said he wanted to know from me, if I could prove that Colonel Campbell supplied the men with money, that were deserters from the 9th regiment. I told him I knew nothing about it. He put his hand in his pocket and offered me money, if I would go
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and make affidavit before a Justice of Peace of Colonel Campbell's doing so; and that he was going up to Dublin, and would get me my discharge, if I chose, and nobody should know any thing of the matter, till I appeared before the Court.

Question by the Court. What answer did you make?

A. I told him I could not.

Question by Mr. Gwynne. Are you certain, that I ever in my life, spoke to you before this day in Court?

A. I am certain of it.

Question by Ditto. Are you certain, that you told me you could not give any evidence against Colonel Campbell?

A. I am certain of it.

Question by the Court. Did Moore make his escape from the guard, to your knowledge, either by directions from Colonel Campbell or by his connivance?

A. All that I know of the matter is, that he made his escape by knocking down the centry.

Corporal *William Harvey*, of the 20th regiment, called on by the Prosecutor, and duly sworn.

Question by Mr. Gwynne. Was you in Cork, on the 12th of November last?

A. I was.

Question by Ditto. Do you recollect a riot and assault, committed on Mr. Gwynne, in Cork?

A. I do.

Question by Ditto. Do you recollect being on guard that day?

A. I do.

Question by Ditto. Do you recollect being in company with a Serjeant of the 20th regiment, late that night or early next morning, in a public house, near the Main-guard house?

A. Early

A. Early the next morning, I was between the hours of five and six o'clock.

Question by Mr. Gwynne. Do you recollect, during the time you were in the house, to have seen any foldiers of the 9th regiment, come in?

A. I do.

Question by Ditto. What passed on their coming in?

A. At the time the foldiers came in, I knew one of them perfectly well, his name was Robert Auger, the other who was with him, I did not know his name, but they were both in disguise; and at the same time, they asked the landlord of the house for a naggin of brandy and change of a guinea; the landlady replied, she could not change the guinea at that time, but as to paying for the brandy, it did not signify, as they might call again some other time; on which Robert Auger took out a pass from his pocket, and said he got that and the guinea to make his escape with his comrade, for fear of being taken up for assaulting Mr. Gwynne.

Question by the Court. Did you examine that pass?

A. I did not; it might be a pass, or it might not.

Question by Ditto. Was the serjeant of the guard present, and did he examine the pass?

A. He did not.

Question by Mr. Gwynne. Did you see Auger in Cork afterwards, at large?

A. I did not.

Question by Ditto. Did Auger declare in what manner he got that pass?

A. Auger declared to me, that he got that pass and a guinea from the regiment to make his escape, for fear of being taken up for assaulting a Mr. Gwynne.

Question by the Court. Were any other person present, at that time?

A. There were several foldiers.

Question

Question by the Court. Did Auger mention Colonel Campbell's name, in any respect to you?

A. He did not.

Question by Ditto. Did Robert Auger, to your knowledge, make his escape by directions of Lieutenant-Colonel Campbell, or did Colonel Campbell wink at his escape, or give him money for the purpose?

A. He did not, to my knowledge?

Question by Ditto. Do you believe he did?

A. I do not.

It being three of the clock, the Court adjourned till to-morrow morning, at eleven o'clock.

TUESDAY the 29th JULY, 1788.

[11 o'Clock.]

The Court met pursuant to adjournment.—Mr. John Moran, gauger, being called on by the Prosecutor, and duly sworn.

Question by Mr. Gwynne. Where do you live?

A. At Kinsale, in the county of Cork.

Question by Ditto. Did you live there in the months of November, December, and January last?

A. I did.

Question by Ditto. Do you know of such a man, as Martin Kennefeck, and where does he live?

A. I do; he lives in a place called *Clon Tued*, on the Cork road, between Cork and Kinsale, about two miles from Kinsale.

Question by Ditto. How many miles from Martin Kennefeck's house to Cork?

A. About nine miles.

Question

Question by Mr. Gwynne. Do you recollect to have seen any men in or near Kinsale, that were accused of assaulting Mr. Gwynne, in Cork?

A. I do.

Question by Ditto. Do you recollect the names they went by?

A. One of them went by the name of Dibel, and the other went by the name of Rhewbottom, I heard.

Question by Ditto. Do you ever recollect to have heard them spoken to, or addressed by those names?

A. I don't recollect that any other person spoke to them by those names; but I think they told me their names were so. I saw people speaking to them, but I did not hear them mention their names.

Question by Ditto. What regiment did they belong to?

A. I don't know; but I heard they belonged to the 9th regiment. I never saw them in any regiment; but I saw one of them in regimentals, so far as wearing a scarlet coat.

Question by Ditto. What was the name of that man?

A. Dibel, as I heard.

Question by Ditto. Do you know Lieutenant-Colonel Campbell of the 9th regiment, by sight?

A. I have seen a gentleman, that was called Lieutenant-Colonel Campbell.

Question by Ditto. Look round the Court, and see whether he is in Court?

A. The Witness pointed to Lieutenant-Colonel Campbell in Court, and said, I think that is the gentleman, but I can't be positive.

Question by Ditto. Did you see this gentleman, whom you then took to be Colonel Campbell, speak to Dibel, or any of those men that were at or near Kinsale, or at Martin Kennefeck's?

A. I did.

Question by the Court. Did you know that person to be Colonel Campbell?

A. I did not.

Question by Mr. Gwynne. Was the person you saw speak to Dibel, the same person you now think to be Colonel Campbell?

A. I think he is—I can't be positive.

Question by Ditto. What month was this in, to the best of your recollection?

A. I cannot recollect.

Question by Ditto. Was it after you heard of an assault being committed on Mr. Gwynne, at Cork?

A. I think it was.

Question by Ditto. Does your recollection serve you, that it was within the months of November, December, or January last?

A. I believe it was in one of them, but I can't recollect which.

Question by Ditto. Did you ever see the person you took to be Colonel Campbell, speak to Dibel more than once?

A. Never to him, nor any other of the men, more than once.

Question by Ditto. How near were you to Dibel, when you saw the person you took to be Colonel Campbell speak to him?

A. Within a few yards, we were walking in company—we were going to Kinsale together—one might be on one side of the road, and the other at the other side.

Question by Ditto. Could you hear any conversation that passed between Dibel, and the gentleman you took to be Colonel Campbell, on your road to Kinsale?

A. Nothing more than that I heard the gentleman that I took to be Colonel Campbell ask Dibel where he was going. I passed on, and heard no more of what conversation passed between them,

ave

save that I recollect, that one of them said, that either we or I, are going to Kinsale.

Question by Mr. Gwynne. How many were there in company with you, when the person you took to be Colonel Campbell spoke to Dibel?

A. There were two.

Question by Ditto. Do you recollect the name of the person who was with you, besides Dibel?

A. I think I heard him say, his name was Rhewbottom, whether it was or not, I don't know.

Question by the Prisoner. Can you take upon you to say, that I was the person who spoke to Dibel?

A. I cannot positively; I never saw the gentleman in any regiment or party, nor in any coloured cloaths except blue, till this day.

Question by the Court. In what coloured cloaths was the person you took to be Colonel Campbell?

A. In blue.

Question by Ditto. Do you mean to infer that you may be mistaken in the person you took to be Colonel Campbell, this Day?

A. I certainly may.

Captain John Smith, Paymaster of the 9th regiment of foot, called on by the Prosecutor, and duly sworn.

Question by Mr. Gwynne. Had you any orders to issue any money for the use of the following persons, after the 12th November, 1787, viz. Robert Farquar, Matthew Dibel, David Ransom, Thomas Hyland, Joseph Burton, Isaac Rhewbottom, Francis Trounfel, Robert Auger, William Moore, and Samuel Orms?

A. I had not; they deserted the 13th of November.

Question by the Court. To what day were those men that deserted on the 13th November, subsisted?

A. To Friday the 16th of November, inclusive.

Question by Mr. Gwynne. What conversation had you with Colonel Campbell (after you say those men deserted) relative to those men?

A. I can't charge my memory any further than that I recollect I heard Colonel Campbell say, that he would not for five hundred pounds that Mr. Gwynne was assaulted.

Question by Ditto. Did Colonel Campbell assign any reason to you at that time for saying so?

A. He did.

Question by Ditto. What was that reason?

A. He said, that the Court of Inquiry was of such a nature that he must be acquitted, and that this kind of business would be productive of new mischief.

Question by Ditto. To whom did Colonel Campbell mean, that that business might be productive of new mischief?

A. He did not explain to me, to whom.

Question by Ditto. Did any other conversation, farther than what you have mentioned, pass between you and Colonel Campbell?

A. I cannot charge my memory with any.

Question by Ditto. Were those men advertized as deserters in any public paper, by order of Colonel Campbell?

A. Not to my knowledge.

Question by Ditto. What steps did Colonel Campbell take to apprehend those men?

A. I do not know.

Question by Ditto. Do you know of his taking any?

A. I do not, from my own knowledge.

Question by Ditto. Were you with the regiment, during the months of November, December, and January last?

A. I believe I was.

Question

Question by Mr. Gwynne. Are you certain of it?

A. I never was absent above a day or two, as I believe.

Question by Ditto. Could there be any steps taken to apprehend those men by Colonel Campbell, or by the regiment, without your knowing something of it?

A. There might have been many, for I was above six weeks confined at that time to my house; one half of the time at least to my bed.

Question by Ditto. Was there any money issued, in order to have those men apprehended, to your knowledge?

A. There was not, to my knowledge?

Question by Ditto. Were you Paymaster of the 9th regiment, during the months of November and December last?

A. I was, and for many years antecedent.

Question by Ditto. Could there, during that period, be any money issued for apprehending those men, without your knowledge?

A. There might, but it is unusual, if any had, I think I must have known it.

Question by Ditto. By whom, or in what manner were those men apprehended?

A. I don't know, but by report.

Question by Ditto. Was it by a party of the 9th regiment?

A. Not to my knowledge?

Question by Ditto. Could the 9th regiment, by exerting themselves, have apprehended them?

A. It is impossible for me to judge.

Question by Ditto. Do you recollect, that you ever said in any company, in the city of Cork, that Colonel Campbell was concerned in concealing those men?

A. I do not recollect ever saying so; and I am sure, I never did say so.

Question

Question by the Court. From the very frequent desertions that have happened in many regiments, have not commanding officers of late been often discouraged, from taking any steps whatever, to apprehend deserters, that might be expensive or troublesome to their regiments?

A. I can't say as to other Commanding Officers; but to my knowledge, Colonel Campbell has been discouraged from not being able to obtain the money expended for advertising, and expences in pursuit of deserters; and I myself, as Pay-master of the regiment, am out of pocket on that account ten pounds and upwards.

Question by Ditto. Is it not usual for officers commanding companies, to issue subsistence for a few days, to parties sent out in pursuit of deserters, without application to the Pay-master?

A. Undoubtedly.

Question by Mr. Gwynne. Is it customary for the Pay-master of a regiment, to issue any money for advertising or obtaining any intelligence respecting deserters, in order that they may be taken, without orders from his Commanding Officer, provided he be not the Commanding Officer himself?

A. It is not customary.

Question by the Court. Do you know that those men were advertised by the Civil Power, in consequence of the assault and their desertion?

A. I don't know whether they were or were not.

Question by the Prisoner. How many deserters were advertised by the 9th regiment, since they came on this establishment?

A. I can't say, but there were very few.

Question by the Court. Do you, to your knowledge, know that Lieutenant-Colonel Campbell was concerned, directly or indirectly, in concealing those men, and preventing their being brought to justice, or in giving them money for that purpose?

A. I do

A. I do not.

Question by Mr. Gwynne. Were any of those few who were advertised by the 9th regiment, accused of so atrocious a fact, as the riot and assault on me?

A. No.

Question by the Court. Have deserters been frequently taken up, in consequence of such advertisements?

A. Very seldom, indeed.

Mr. Gwynne, the Prosecutor was asked,

Question by the Court. Did you make any application to the Commanding Officer of the 9th regiment, either by yourself or through any person on your behalf, to advertise those men?

A. I did not, because I was advised by my friends and by the Magistrate, that I should not, as they supposed the regiment would advertise them; and likewise, that I should wait to see what Colonel Campbell and the regiment would do in it; and that if they were not concerned in it, they would advertise, and use every exertion to apprehend the persons accused of the riot and assault, for their own credit, and for the discipline of the regiment.

Question by the Prisoner. Did you give credit to the Agent for the pay of those deserters, from the 17th of November to the end of the month?

A. I did from the 17th, inclusive.

Question by Mr. Gwynne. How soon or at what time, did you give the Agent that credit?

A. At the time that the non-effective account was made up to the 31st December.

Question by Ditto. When was this non-effective account made up?

A. As soon as it could be arranged after the 31st December, which was about the first week or the 10th of January.

Question

Question by Mr. Gwynne. Do you know of a Court of Inquiry held at Cork, of which Colonel Lind was President?

A. I do.

Question by Ditto. Do you recollect the day I was assaulted?

A. I don't know.

Question by the Court. Had that Court of Enquiry, or the report of it, any thing to do either by forwarding or retarding the making up of your non-effective account with the Agent?

A. I never even thought of that Court of Enquiry, with regard to the making up of my accounts with the Agents in any shape.

Question by Mr. Gwynne. At the time that those accounts were making up, had you any suspicion, or was there a report, that a serious enquiry would take place with regard to those men that were accused of assaulting Mr. Gwynne.

A. I heard that a court of enquiry was expected.

It being three of the clock, the Court adjourned till to-morrow morning, at eleven o'clock.

WEDNESDAY 30th JULY, 1788.

[11 o'Clock.]

The Court met pursuant to adjournment.—Mr. Gwynne called for the muster rolls of the 9th regiment for six months, ending 31st December, 1787, and the monthly returns of said regiment for five months, from the 1st of September to the 1st of December, 1787; as also the embarkation return of the said regiment, taken on the 15th January, 1788, which were produced.

Mr.

Mr. Gwynne produced the muster-roll of Lieutenant-Colonel Campbell's company, for three months, ending 30th September, 1787, in which Robert Farquar was mentioned a serjeant, without any observation opposite his name. He next produced the muster-roll of Colonel Campbell's company for three months, ending 31st December, 1787, in which Robert Farquar is mustered as private, and having deserted on the 15th November, 1787. Mr. Gwynne pointed out to the Court, what he was satisfied was an erasure, and a fresh insertion of the day of the month, on which Robert Farquar is mustered as deserted; and Mr. Gwynne, likewise pointed out the name of Francis Trounse, in the same muster-roll as mustered as deserted, and with a like erasure and insertion, as he asserted to be opposite to the name of Robert Farquar; he next produced a muster-roll of Lieutenant-Colonel Campbell's company, taken for fifteen days, commencing the 1st January, 1788, and ending the 15th January following, both inclusive, in which he produced the name of Francis Trounse, mustered as having joined from desertion on the 13th in prison, with an erasure and fresh insertion, in the writing of, *from desertion, in prison*. Mr. Gwynne produced the muster-roll of Major Richie's company for three months, ending the 30th September, 1787, in which Matthew Dibel is mustered as serjeant, without farther observations. He next produced the muster-roll of said company for three months, ending 31st December, 1787, in which Matthew Dibel is mustered as deserted the 3d of November, 1787, with an erasure after the figure of 3.

Mr. Gwynne now referred to the muster-roll of Lieutenant-Colonel Campbell's company, beginning the 1st day of January, and ending the 15th of January, when Matthew Dibel is mustered as joined from desertion the 13th, in prison, with an erasure

and fresh insertion, in the writing of, from desertion, in prison.

Mr. Gwynne now produced the muster-roll of Captain Rose's company for three months, ending the 31st December, 1787, where Isaac Rhewbottom is mustered to have deserted the 13th of November, with an erasure and fresh insertion, in the day of the date of the month.

He next produced the muster-roll of Captain Rose's company for three months, ending 31st December, 1787, in which Samuel Orms is mustered as deserted the 13th November, with an erasure and fresh insertion in the day of the month.

He next produced the muster-roll of Captain Murray's company from the 1st January to the 15th following, 1788, in which he, Samuel Orms, is mustered as joined from desertion the 13th in prison, with an erasure and fresh insertion of the word deserter, the figures thirteen, and word prison.

He now produced the muster-roll of Captain Rose's company for three months, ending the 30th September, 1787, in which John Cooper is mustered as serjeant, without farther remark.

He produced the muster-roll of the same company for the three following months, in which John Cooper is mustered as a private, and deserted the 13th of November, with an erasure and fresh insertion in the day of the month.

Next he produced the muster-roll of Captain Rose's company, beginning 1st of January, and ending 15th following, in which John Cooper is mustered as discharged the 15th of January. He next produced the muster-roll of Captain Buchanan's company for three months, ending 31st December, in which Robert Auger is mustered to have deserted the 13th of November, with an erasure and fresh insertion of the day of the month. He next produced the muster-roll of Lord Say and Sele's company, and in which

which Joseph Burton, Thomas Hyland, and William Moore, are mustered deserted on the 15th November, with erasures and fresh insertions in the day of the month. He next produced the muster-roll of Major Richie's company for fifteen days, ending the 15th January, inclusive, in which Joseph Burton is mustered returned from desertion on the 15th, in prison, with an erasure and fresh insertion in the day of the month. He next produced the muster-roll of Captain Piercy's company, beginning the 1st January, 1788, and ending the 15th following, in which Thomas Hyland is mustered to have joined from desertion the 15th in prison, with an erasure and fresh insertion, in the words from desertion, the figures 13. He next produced the muster-roll of Captain Baily's company for three months, ending 31st of December, in which David Ransom is mustered as deserted the 13th November, with an erasure and fresh insertion in the figures of the day of the month. He next produced the muster-roll of said company, beginning the 1st of January, 1788, and ending the 15th following, inclusive, in which David Ransom is mustered as joined from desertion the 13th in prison, with an erasure and fresh insertion of the word desertion, the figures 13, and the word prison. He next produced the muster-roll of Captain Buchanan's company for three months, ending 31st day of December, 1787, as also the monthly return of the said regiment for the month of November, 1787. By the muster-roll it appeared that five men (four of whom were accused of assaulting Mr. Gwynne) were mustered as deserted in the month of November, and by the monthly return of the 9th regiment, for the month of November, 1787, signed John Richie, Major of said regiment, it appeared that no more than three men of Captain Buchanan's company had deserted that month.

Mr. Morgan Bourne, Commissary of Musters, called on by the Prosecutor, and duly sworn.

Question by Mr. Gwynn. Do you recollect to have seen this or any other erasure in the muster-roll, in the date of the day of the month, in which Robert Farquar is mentioned as deserted the 13th November last?

A. I never did, till I saw it at the Muster Office yesterday.

Question by Ditto. Do you recollect this erasure before Matthew Dibel's name?

A. I do not.

Question by Ditto. Do you recollect these erasures which I now shew you in the muster-roll opposite the names of Robert Auger, Joseph Burton, Thomas Hyland and William Moore?

A. I do not.

Question by Ditto. Do you recollect those erasures in the muster rolls, before the names of Samuel Orms, Isaac Rhewbottom and John Cooper?

A. I do not.

Question by Ditto. Do you recollect this erasure and insertion which I shew you in the muster-rolls before the name of David Ransom?

A. I do not.

Question by Ditto. Do you recollect this erasure and insertion, before the names of Francis Trounsel and Matthew Dibel?

A. I do not.

Question by Ditto. Do you recollect this erasure and insertion, before the name of Joseph Burton?

A. I do not.

Question by Ditto. Do you recollect this erasure and insertion, before the name of David Ransom?

A. I do not.

Question by Ditto. Do you recollect the erasure and insertion of and before the name of Samuel Orms?

A. I do

A. I do not.

Question by Mr. Gwynne. Do you recollect this erasure and insertion, before the name of Thomas Hyland?

A. I do not.

Question by the Judge Advocate. Is the signature Morgan Bourne to the muster-rolls your signature?

A. It is.

Question by Ditto. Were the several muster-rolls produced to you by Mr. Gwynne, taken by you as Commissary of Musters?

A. They were.

Question by Ditto. Did those muster-rolls ever undergo any change by erasure or otherwise, while in your possession?

A. No.

Question by Ditto. When did you return them?

A. To the Muster-Master General's office.

Question by Ditto. Is it not usual to have muster-rolls prepared by a Sergeant in a regiment, and where dates are incorrect, to have these dates erased and proper ones inserted?

A. It is; I have frequently known it.

Question by the Court. If a Commissary shall at any time observe erasures and insertions, in any muster-roll, has such Commissary any instructions to reject the muster-roll, provided it be legibly transcribed?

A. I never recollect having received any directions to reject a muster-roll, on that account.

Question by Ditto. Though you cannot ascertain the particular erasure pointed out to you by Mr. Gwynne, do you recollect that there were any erasures on those muster-rolls, at the time of taking them?

A. I do.

Question by Ditto. After you mustered the 9th regiment in the months of October and January last,
did

did you bring the muster-rolls with you to the Muster-Master General's office, and did you part with the possession of them for any time after you took the muster till you lodged them in the office?

A. After I signed the rolls I kept them in my possession until I sent them by post to the Muster-Master's office.

Question by Mr. Gwynne. Is it not customary for a Muster-Master, if he perceives any erasures in the muster-rolls, to enquire what was the cause of such erasures?

A. I have seen erasures so frequently, that I never did enquire the cause, as erasures, to my knowledge, are occasioned by the mistake of those persons who make out the muster-rolls.

It being three of the clock, the Court adjourned till to-morrow morning eleven o'clock.

THURSDAY the 31st JULY, 1788.

[11 o'Clock.]

The Court met pursuant to adjournment.—Mr. Gwynne produced the muster-roll of Captain Rose's company of the 9th regiment for three months, ending 31st December, 1787, in which he pointed out the names of Samuel Orms, Isaac Rhewbottom and John Cooper, who were accused of the assault on Mr. Gwynne, and were afterwards convicted, and who were mustered as deserted on the 13th of November. He then produced the monthly return of said regiment, signed by Major John Richie, where

wherein he pointed out the number of deserters from the same company, for the month of November, 1787, to be but two.

It appeared by the muster-roll he produced, that the muster was taken the 7th January, 1788. He then referred to the first memorial to his Excellency the Marquis of Buckingham, which appeared to be dated at Cork, on the 24th day of December, 1787.

Here the Prosecutor closed his evidence, and the Court having called on Colonel Campbell to enter into his defence; he said he would be ready on Monday morning.

And the Court adjourned till Monday morning, at eleven o'clock.

MONDAY,

MONDAY, the 4th of August, 1788.

[11 o'Clock.]

The Court met, pursuant to adjournment, and Colonel Campbel read a paper to the Court, as the opening of his Defence, and which he afterwards delivered to the Court, and requested it might be inserted on their proceedings; which was accordingly done, and is as follows:—

“ My Lord, and Gent. of the Court-martial,

“ YOU have now devoted the labour of many days to the examination of the charges which have been exhibited against me by Mr. Daniel Gwynne, and I believe it will be universally admitted that, during the course of your proceedings, you have manifested a patience befitting men to whom the dispensation of military justice has been entrusted. Whatever the Prosecutor had to offer in support of his accusation, has been heard with the utmost attention: the public documents which he has demanded, the Court has uniformly ordered for him; and throughout the whole of this trial, every reasonable assistance that could be expected has been immediately vouchsafed him.—He has had several months to prepare and arrange his evidence; all the proofs that could be collected on the subject have been laid before you, and they have all been carefully examined. Whatever then may be your final opinion on the matter now under your consideration, that opinion must derive considerable weight and respectability from the mature deliberation with which it is formed.

“ I must also acknowledge the kindness of the Court towards me, in granting the time which I requested, to prepare for my defence:—

That

That indulgence I required, in order attentively to review the whole of the evidence adduced in support of the prosecution, before I submitted any thing on my part; but more especially to inspect and compare the Monthly Returns and Muster-Rolls of the regiment, upon which Mr. Gwynne has thought proper to make so many observations.

“ To any person who has a regard to the character he bears, either as an officer or a citizen, standing his trial on such charges as the present, must necessarily be attended with some degree of pain and anxiety of mind, but I confess, at the very beginning of this prosecution I felt a secret satisfaction in reflecting that, let the nature of the evidence adduced against me be what it might, I was not conscious to myself of violating my duty in a single instance. I knew that the judges who were to try me, were men capable of searching into the real merits of the case before them; that they would not suffer themselves to be imposed upon by any vague or dishonest testimony; and that when once the truth was fully investigated, they would be as ready to justify the innocent as to punish the guilty: I therefore approached my trial with the respectful confidence that becomes an innocent man appearing before an upright tribunal.

“ Before I consider the specific charges that have been made, permit me to make an observation on the peculiar situation of the person who has assumed, in this Court, the character of a Prosecutor. That person bears no commission in his Majesty's army. When one officer exhibits charges against another before a Court-martial, he does it at the risk of the censure and of the penalties which may be visited upon a military man bringing forward a groundless accusation.—Many instances

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occur

occur where such attempts have been followed by very heavy consequences to the prosecutor, who was bad enough to make them: But the Prosecutor in this case has nothing of that kind to fear; and being secure from any punishment as a malicious accuser, he takes all chances for conviction against the accused. Yet though this circumstance may be some personal disadvantage to me at present, I must acknowledge that I feel a sincere satisfaction in reflecting, that my Prosecutor does not bear his Majesty's commission, I should be sorry to see an accusation, so ungenerous and unfounded, arising from any man of the honourable profession to which I belong. Allow me also to observe, that neither is my Prosecutor any of the civil magistrates against whose authority I have been charged with offending. If I had not done my duty with regard to the civil power, it might be expected that some magistrate would have charged me with that offence, and asserted his own authority; but the civil magistrates have expressed their sense of the propriety of my conduct in the strongest terms.

“ Heavy as the charges are which have been exhibited against me, the Prosecutor has not even confined himself to them, in the case he has stated to you, (and which is made part of your minutes). He has said, in his address to you, that the same power which meditated the attack, covered the retreat; and throughout the whole of his preliminary speech in this Court, in memorials to his Excellency, and in affidavits before the Civil Courts, he has charged me with encouraging the soldiery to attack his person, with entering into a wicked conspiracy to deprive him of his life, and with sheltering and rewarding those whom he describes as the perpetrators of my designs against him.

“ In weighing the truth or falsehood of this accusation, you will first turn your attention to the pro-

probability of the charge, and here the members of the Court will naturally consider what motive I could have had to have incited the soldiery to violate the discipline of the regiment, (which it was ever my study to preserve) in order to have an outrage committed on the person of a private individual, from whom I had nothing to hope or fear.

“ I had no principle of revenge or resentment in my mind against Mr. Gwynne; and if I had, I should not have debased myself, or the regiment so much, as to make the soldiers I commanded the instruments of that vengeance.

“ The 9th regiment have served abroad, and they have behaved in the field as became brave men; the Court then will scarcely presume that I should have encouraged a single soldier in that regiment to forfeit in peace the good character he had earned in war. Will the mind of any person, untinted with the passions of the Prosecutor, be induced to believe that I could be so totally forgetful of the moral principles which should govern my conduct as a man, or of the honour, which is the pride of the soldiery, as to enter into a conspiracy to assassinate my fellow-subject?—At that period too, the general expectation of a war prevailed, the regiment was on the point of embarkation, and I may with truth assure the Court that my thoughts were occupied on a far different and more honourable object, than turning the arms of the soldiery against the life of the Prosecutor.

“ If the Court here were competent to try the conduct of Mr. Gwynne himself, I could lay before them some acts, by which it would appear to them that Mr. Gwynne, when he was a lieutenant in the regiment, excited the resentment of many of the private soldiers. An officer may make himself odious to, or beloved by, the men whom he

commands. In a Court of Enquiry held at Cork, he impeached the character and conduct of many of the best non-commissioned officers of the 9th regiment; and on the minutes of that court some acts of cruelty against the soldiers are set forth. Why should Mr. Gwynne impute to any officer in the regiment the violence of a misguided soldiery, whose character he had aspersed, and whose resentment he unfortunately provoked? He had the soldiers who assaulted him tried and convicted; *they undergo at this hour the punishment consequent on their conviction.*—The laws of his country have given him, as to them, the satisfaction he required; but it is really a cruel attempt to endeavour to involve in their guilt an innocent officer who deeply lamented this outrage, and by every method endeavoured *to prevent it*: for when Mr. Gwynne first communicated to General Patterson his apprehensions of an attack on him, I had immediately public and repeated orders delivered at the head of every company, ‘That the soldiers should behave to Mr. Gwynne as to any other inhabitant of Cork.’

“Having so far premised some observations on the general nature of the accusation, let me now call your attention to the specific charges. I shall state the eight first charges, and after that take a view of the ninth charge.

“The first charge—That I did not deliver up, or use my utmost endeavour to deliver up, to the civil magistrates of the city of Cork, the soldiers who assaulted the Prosecutor.

“The second charge is of the like effect—For not aiding and assisting the officers of justice in apprehending the soldiers, in order to bring them to trial.

“The third charge—For permitting the soldiers to quit their quarters in the barracks.

“The

“ The fourth charge—For knowingly permitting, or conniving at, several of the soldiers who absented themselves from the barracks, secreting themselves, to prevent their being apprehended.

“ The fifth charge—That I knew where several of the soldiers were secreted, and did not apprehend nor endeavour to apprehend them.

“ The sixth charge—That the soldiers had free access to and from the barracks, without my using my endeavours, or taking any step to have them apprehended.

“ The seventh charge—For my supplying them with money.

“ The eighth charge—For permitting, allowing of, or causing money to be paid for their use.

“ Permit me now to examine the evidence that has been adduced by the Prosecutor in support of these charges ; but in doing this, I do not mean to take up your time in minutely recapitulating the testimony of the witnesses, which must still remain fresh in the recollection of the Court, and has been accurately entered on their minutes. My intention is barely to advert to such *material parts* of the evidence as appear to me immediately to apply to the subject under your consideration ; and the Court will, I trust, do me the justice to believe, that if in referring to any part of it I should commit any mistake, the error is not intentional, and it can easily be corrected.

“ General Patterson has been the first witness called in support of the prosecution, and I was happy to find so respectable and experienced an officer examined before you on this occasion.—I was under his command at that very period at which my conduct is complained of by the Prosecutor. General Patterson was therefore fully qualified to give you every necessary information ; and he has told you that there were two different appli-

applications for the soldiers to be delivered up to the civil magistrates.—That on the first application, I immediately delivered up the three men accused, and lodged them in goal.—That the men complained of on the second application were returned deserted, before any information were lodged against them, or application made for them.—That the civil magistrates had expressed their approbation of my conduct, and their obligation to me for the assistance I had given them;—these very magistrates whom I am accused of having refused or neglected to assist, and who certainly must be presumed to have known whether I had given the proper assistance. And he concluded with informing the Court, that he did not know me to be in any respect guilty of concealing or supporting those soldiers by connivance or otherwise.

“ The evidence of Colonel Lind agreed with that of General Patterson. He equally bore testimony to my conduct, as commanding-officer of the garrison, at that particular time. He proved the approbation of the civil magistrates, and in one particular was enabled to go further than the first witness, as he was actually present when I delivered up the men to the sheriffs. He has also declared that he did not know me in any respect, by connivance or otherwise, to be guilty of concealing or supporting any of those deserters; and what the magistrates of Cork declared to General Patterson and Colonel Lind, they have solemnly attested upon oath. Unable, from their public duties, to attend this trial, they have taken the only method in their power to vindicate my innocence in this point; the mayor and sheriffs have gone before a magistrate, and sworn an affidavit in the presence of witnesses.—Permit me, as this is a material part of the case, to read these affidavits in their very words.

County of the City of Cork, to wit. } “ THE Right Worshipful
 “ of the city of Cork, maketh oath, that on or
 “ about the thirteenth day of November last, in-
 “ formations were sworn before this Deponent by
 “ Mr. Daniel Gwynne, whereby the said Daniel
 “ did charge Stephen Reilly, serjeant in his Ma-
 “ jesty’s ninth regiment of foot, then quartered in
 “ Cork, John Philby, and another foldier in said
 “ regiment, with a riot and an assault on the said
 “ Daniel, on the twelfth day of November then
 “ instant. And this Deponent saith, that this De-
 “ ponent did grant a warrant to take and appre-
 “ hend the said Reilly, Philby, and said other sol-
 “ dier so accused of said riot and assault. And
 “ this Deponent saith, that the said persons, when
 “ they were demanded by the civil power, were,
 “ as Deponent heard and believes, for the purpose
 “ of their more secure delivery to the civil power,
 “ attended by Lieutenant Colonel John Campbell,
 “ of the same regiment, to the goal of said city.
 “ This Deponent saith that, on or about the six-
 “ teenth day of November aforesaid, further in-
 “ formations were sworn by the said Daniel
 “ Gwynne against several other soldiers in said
 “ ninth regiment, charging them with being con-
 “ cerned in said riot. And this Deponent saith,
 “ he in like manner granted his warrant on said
 “ informations to apprehend said persons, who were
 “ all afterwards, as Deponent heard and believes,
 “ committed to the goal of said city, and stood
 “ their trials for the offences they were charged
 “ with. This Deponent saith, that this Deponent
 “ was sworn into the office of mayor of said city
 “ on the first day of October last; and this Depo-
 “ nent saith, that from the time of his so coming
 “ into office, during the stay of said ninth regi-
 “ ment at Cork, the said John Campbell, as far as
 “ came

“ came within this Deponent’s knowledge, gave
 “ every aid and assistance within his power, as a
 “ commanding officer, to the magistrates, in the
 “ preservation of the peace of the said city.

“ JAMES KINGSTON.

“ Sworn before me at the city of Cork, this
 “ 10th day of July, 1788.

“ JOHN TRAVERS,

“ one of the Aldermen of the city of Cork.

“ At the Tholsel, in presence of

“ WILLIAM JONES, Town Clerk.”

County of the City } “ Jeffrey Piercy and Row-
of Cork, to wit. } “ land Morrison, Esqrs. high-
 “ sheriffs of the city of Cork, make oath, that in
 “ consequence of informations sworn by Daniel
 “ Gwynne, before the mayor of said city, charg-
 “ ing Stephen Reilly, a serjeant in his Majesty’s
 “ ninth regiment of foot, and John Philby and
 “ Thomas Magrath, private soldiers in said regi-
 “ ment, with a riot and assault on the said Daniel
 “ Gwynne, on the twelfth day of November last,
 “ these Deponents, on the fourteenth day of No-
 “ vember last, applied to Major General Patterson,
 “ then commander in chief of the province of
 “ Munster, as these Deponents believe, and who
 “ then resided in the city of Cork, to have said
 “ persons delivered over to the civil power, who,
 “ in consequence thereof, as Deponents believe,
 “ directed Col. John Lind, commanding officer of the
 “ garrison of said city, to deliver over to Deponents
 “ the said Stephen Reilly, John Philby and Tho-
 “ mas Magrath. And these Deponents say, im-
 “ mediately on such application the said John
 “ Lind applied to John Campbell, Esq; the lieu-
 “ tenant-colonel and the then commanding officer
 “ of

" of said regiment, to deliver over said persons to
 " Deponents. And these Deponents say, that the
 " said John Campbell not only delivered up said
 " persons so accused to Deponents, but also, as
 " Deponents believe, for the purpose of effectually
 " assisting the civil magistrates in the execution of
 " the laws, did attend the said persons, with these
 " Deponents, to the goal of said city, where the
 " said persons so accused were lodged. These
 " Deponents say, that on or about the sixteenth
 " day of November aforesaid, further informations
 " were sworn, as these Deponents heard and be-
 " lieves, by the said Daniel Gwynne, before the
 " mayor of said city, charging Robert Farquhar,
 " a serjeant in said regiment, and several privates
 " thereof, with being concerned in said riot and
 " assault. And these Deponents say, that, by the
 " direction of the mayor of the said city, these
 " Deponents applied to the said Major General
 " Patterson to deliver up to the civil power the
 " said several persons so accused by the said Da-
 " niel Gwynne, but these Deponents say, that
 " at that time, or on that occasion, these Depo-
 " nents did not make any application to the said
 " John Campbell to deliver over to these Depo-
 " nents the persons so accused by the said Daniel
 " Gwynne, in said informations, but these Depo-
 " nents say, that on the day when they as afore-
 " said demanded the persons so accused as afore-
 " said from the said General Patterson, they re-
 " ceived a letter from the said General Patterson,
 " wherein he informed these Deponents that he
 " had applied to the said John Campbell to deliver
 " to the civil power the persons so accused of said
 " riot and assault by the said Daniel Gwynne, and
 " that the said John Campbell had, on such ap-
 " plication, informed him that the said several
 " persons had deserted. And these Deponents
 L " say

“ say, that from the time Deponents were sworn
 “ into office, and during the whole time the said
 “ John Campbell was quartered in Cork with said
 “ regiment, whenever any application was made
 “ by these Deponents to the said John Campbell
 “ to afford any assistance to the civil power, the
 “ said John Campbell, with every readiness, al-
 “ ways complied and seemed desirous of giving
 “ such assistance. And these Deponents say, they
 “ never made any application (save as aforesaid)
 “ to the said John Campbell to deliver up to these
 “ Deponents, or the civil power, the persons ac-
 “ cused by the said Daniel Gwynne as aforesaid.

“ JEFF. PIERSEY and ROWL. MORRISON.

“ Sworn before me, at the city of Cork, this
 “ 10th day of July, 1788.

“ JAMES KINGSTON, Mayor.

“ At the Tholsel, in presence of

“ W. JONES, Town Clerk.”

“ From the testimony of those respectable wit-
 nesses I should submit to the Court, that these in-
 ferences naturally result——

“ First, That the civil magistrates, against whose
 authority it has been alledged that I transgressed,
 did not conceive me guilty of any neglect for re-
 fusing to aid them in their duty ; but, on the con-
 trary, have declared their approbation of the man-
 ner in which I acted.

“ Secondly, That the officers under whose com-
 mand I acted (and who had the fullest opportu-
 nity to observe my conduct) have declared their
 sense strongly in my favour. And,

“ Lastly, Their testimony has established this
 material fact in the case, that I immediately deli-
 vered up all the soldiers complained of on the first
 appli-

application, and took care that they should be lodged in goal without any delay or disturbance.

“Can it be supposed that I could have any wish to serve one party of the soldiers, when I at once delivered up the others? If I had a desire to shelter the offenders from justice, that improper partiality would have extended itself to them all equally; and if Mr. Gwynne had thought proper to identify all the men at once, can there be a doubt but that I should have given up every man of them with the same readiness and obedience to the laws which I observed as to the three he thought proper at first to accuse?—In fact, Mr. Gwynne in some measure wishes to make me answerable for his own deficiency, by omitting in his first informations the greater part of those he thought proper upon recollection afterwards to accuse, and who would have been given up to the civil power, if he had not himself laid the foundation of their escape, by raising an alarm in the soldiers from his first set of informations, and allowing time for desertion by the delay of the second set of informations, and ’till he had identified them in his informations; I, who was not present at the riot, could not divine who were the offenders; nay, it will occur to the good sense of the Court, that the lodging the three men in goal might naturally occasion a desertion in any of the rest who apprehended that informations might afterwards be lodged against them.—Finding no protection in their officers, they sought it by desertion.

“Mr. Gwynne then called upon the captain and purser of the Zebra frigate. I have attended carefully to their evidence, and I confess that I have not been able to collect any thing from it which tends to fix criminality upon me.—They have proved that certain soldiers, whom they afterwards knew to be of the ninth regiment, were for some

time on board that sloop ; but they have declared that, to their knowledge I never in any respect interfered or knew of their being there. Indeed the idea which the Prosecutor wishes by this part of his evidence to impress, appears altogether chimerical ; he would have the Court believe that I concealed those soldiers on board the Zebra frigate, with an intention of carrying them to the West-Indies, and there putting them again on the strength of the regiment.—Here the Court will please to remark, that the regiment was compleated to 56 men each company, and if any vacancies happened by death or desertion, such vacancies were to be supplied with drafts from the nearest regiments. Those men could never have been again admitted into the regiment while the accusation hung over them. I never could have thought of putting them on the strength of the regiment, in case of any vacancy, while the accusation hung over them.—The whole expence therefore of maintaining those men during the time the regiment was abroad, must have fallen upon myself alone ; which the Court will scarcely believe I should have been so rash as to undertake. The captains of the transports destined to carry the regiment abroad would not have received or maintained them. So that the whole of this scheme imputed to me, appears to the last degree wild and improbable.

“ One Crowley (a priest) was next called by the Prosecutor, in order to prove that I had either conversed with or had seen the soldiers while they were concealing themselves. Here too the evidence failed the Prosecutor. The testimony of Crowley went to nothing but conversations at which I was not present, and which did not tend to criminate me.—Crowley confessed that he was an utter stranger to me ; and all his testimony proved but one fact—that he himself was in company with some

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some of the deserters at a public-house, where they concealed themselves, and that they pointed to a person, whom they called Colonel Campbell, who was riding by.

“ After Mr. Gwynne had declared that he had finished the examination of Crowley, the Court adjourned to the next day ; and on the next morning Mr. Gwynne proposed to resume the examination of the witness. This extraordinary conduct induced the Court to search fully into the matter, and on a strict enquiry into the circumstances, it appeared, that the Prosecutor and the Witness had passed much of their time together from the closing of the examination on the former day ;—that they had dined in company with each other, and walked out together without any other person, that evening, and had slept in the same house. After so much opportunity to deliberate on the new evidence that was to be given, it reflected no honour on the Prosecutor to endeavour to prop the weakness of the testimony on the former day by a second appeal to the same witness. The Prosecutor was himself examined on this occasion, and, if I mistake not in my recollection, differed from his own witness in some very plain and striking circumstances, and forgot other matters of a very obvious nature, which happened on the preceding day. Crowley withdrew without my asking him a single question. What impression his appearance has made upon the Court, I shall not presume to determine ; but I may be allowed to observe, that it was scarcely possible for any prosecutor to offer the testimony of a witness to a court under stronger circumstances of suspicion.

“ Two private soldiers have been examined, who have sworn to some of those deserters hiding themselves in the barracks on different nights, and
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one or two of them having been seen in the streets of Cork.

“ These witnesses have all admitted that they never reported these circumstances to me ; and I beg leave to observe, that not a single witness has been called to shew that I got any, even the slightest information on the subject.

“ If I had really been screening those men from justice, could it be supposed that I should have done it in so strange and unguarded a manner as has been suggested ? leaving them in the streets liable to detection, would never have been the mode of any officer’s proceeding who was desirous of protecting soldiers from the civil power. I did not reside in the barracks at this time, there being only accommodation for eight subalterns.

“ That they might have escaped my observation is not wonderful, when it is considered that Cork was at that time full of drafts from different regiments preparing to embark ; and unless I happened actually to meet the deserters, or some information was conveyed to me, it was altogether impossible for me to come to the knowledge of where they concealed themselves : besides, it is very observable that Mr. Gwynne, whose whole attention appears to have been directed to the object of apprehending these men, did not discover them for a great length of time ; or if he knew where they hid themselves, he withheld that information from the commanding officer of the regiment, in order to lay a ground of accusation against him : if they eluded the search of an irritated and inquisitive Prosecutor, is it wonderful they should escape the observation of an officer who had the care of a regiment then under orders of embarkation, which must necessarily have taken up the whole of his attention ?—Permit me also to observe, that during three weeks of the time, those men had
absented

absented themselves from the regiment, I had been aid-de-camp to his Royal Highness Prince William Henry; and during that time was mostly absent from Cork.

“ A corporal of the 20th regiment (his name Harvey) has been called to prove that one or two of these men were seen at a public-house, at five o'clock in the morning, with some money and a paper, which one of them called a pass, but which no person examined or read.—That a man who intended to desert should declare he had a pass, was the most obvious thing for him to say for his own protection.—He was in disguise, which was inconsistent with having a pass, and this witness, like all the former has told you, that he neither knew nor even believed that I had any knowledge where these men were, or any concern in concealing or supporting them by connivance or otherwise.

“ A witness (a serjeant of the 9th regiment, by name Stagg) has been called to the last charge—the charge of not delivering over Moore, a soldier of the ninth regiment, to the civil power.

“ The witness called by the Prosecutor to that charge, was certainly the person best qualified to give the Court every information on that head, for he was the serjeant of the guard to whose custody Moore was committed.

“ It appears from the witness, that Moore was delivered up to the ninth regiment as a deserter, and not charged with any civil offence whatsoever. That he was immediately confined to the regimental guard-room, and in a few hours after he begged leave to go out on a call of nature;—that a centry was sent with him, but in the darkness of the night he contrived to knock down the centry and effect his escape: for this offence the soldier who guarded him was afterwards tried by a court-martial; the minutes of which now lie on the table for the inspection

inspection of the Court. It has also appeared from the evidence of Serjeant Stagg, that he did not report to me that Moore was in custody that day, and that he declared he did not know I had any knowledge of Moore's having been delivered up to the regimental guard. Here then, I beg leave to observe, that it appears not only from the evidence of Serjeant Stagg, but also from the evidence of Colonel Lind, that Moore was received by the regimental guard as a deserter, and not as a prisoner charged with any civil offence. If he had been delivered as guilty of any civil crime, he should have been lodged in the custody of the main-guard, and not of the regimental-guard.

" The second witness called by the Prosecutor to this last charge was a private, of the name of Leggett; he was the centry at the barrack-gate the evening that Moore escaped. He corroborated the evidence of Serjeant Stagg as to all the circumstances of the escape of Moore; and that he had pursued Moore as far as he could, without leaving his post.

" It is not without some concern that I must remark on what has come out from the cross-examination of this witness, as well as of David Powell. — They appear to have given their testimony with fairness. Powell has informed you that he has received different sums from the Prosecutor; and Leggett has sworn that the Prosecutor offered him money and his discharge, if he would swear that I was guilty of supplying the soldiers with money; and that he made him this offer after he had informed Mr. Gwynne that he knew nothing about the matter.

" If this be true, and the witnesses have been produced by the Prosecutor himself, and stand unimpeached and uncontradicted, I might ask Mr. Gwynne, what injury I ever did him to have recourse

course to such unworthy means for procuring evidence against me. The cause must indeed be a bad one, which requires bribery and promises of reward in order to support it: and when the Court recollects this fact, they will consider the testimony of any witness produced by the Prosecutor, and unknown to them, with some degree of caution.

“ John Moran (a gauger of Kinsale) was then called by the Prosecutor, in support of the eight first charges. It is observable, that this witness was not thought of at first by the Prosecutor, nor contained in the list of witnesses given in to the Court.—The trial had continued two or three days before his name was even mentioned. Mr. Gwynne then applied to you to have him brought up; and the Court, in order to have all the evidence which the Prosecutor thought material laid before them immediately, applied to the chief commissioners of the revenue, who dispatched an express for this man; and he was accordingly brought up, and appeared before you. I mention this circumstance, in order to shew that the Prosecutor can have no reason to complain of the loss or suppression of any evidence tending to throw light upon the matter under your consideration.

“ This witness has told you that he saw one day, upon the road to Kinsale, a gentleman, whom he took to be Colonel Campbell, speak to one Dible and Ruebottom, and ask them where they were going; to which they, or one of them, answered, to Kinsale; and that he heard and saw nothing more. He has admitted that he never saw the person whom he took to be Colonel Campbell 'till that day;—that he had never seen him in regimentals before the day he saw him in Court;—that he could not be positive it was the person he then took to be Colonel Campbell, but that he might be mistaken. He could not remember the

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month this happened, whether November, December or January, and that he knew but very little of either Dible or Ruebottom.

“ The Court will here observe how vague and inconclusive this testimony is; uncertain both as to the person and the time, thereby rendering it impossible, if what he had sworn was material, to contradict it. The evidence has as little probability, as it has accuracy, in it.

“ That I should be so foolish and unguarded as to hold a conversation with deserters from my own regiment on the high-road, before or in the hearing of Moran, who was an utter stranger to me, will appear to the Court scarcely credible, and as totally inconsistent with that cunning policy and those deep-laid schemes which the Prosecutor has imputed to me. But, I presume that the witness himself declaring he can be by no means positive as to the person that he saw on the road, will, on the general rules of evidence, render his testimony of no weight with the Court.

“ Captain Smith, of the 9th regiment, was the last witness called by the Prosecutor; and I must beg leave to draw the attention of the Court to his testimony, as I humbly conceive it to establish some material facts in my favour.—He has told you that he never received any orders from me to pay any money to those men after the 13th of November, 1787.—He was paymaster of the regiment, and the orders must have come to him.—He has sworn that those men deserted on the 13th, were paid in advance up to the 16th, and credit given by him to the agent for their pay for the remainder of the month of November.—He has accounted to you why these men were not advertised as deserters; Government did not think proper to pay the expences of former advertisements, for the amount of which he himself was at that time

time out of pocket : and, in fact, it is well known that the inefficacy and expence of advertising deserters has rendered that practice much less frequent than ever.

“ As to my not having sent out parties to apprehend those deserters, which has been insisted upon, every member of the Court must be aware how ineffectual such attempts are where no certain information has been received of the place where such deserters are concealed, and that it is only a source of dissipation to the soldiery, and quarrels with the people of the country, and that the injury which the service sustains by the desertion of some, is encreased by the relaxation in the discipline of others.

“ I am fully sensible that a man in my situation cannot offer his own declarations as evidence for himself. But the Prosecutor has drawn from Captain Smith a conversation of mine with him, in which I declared, that I would not for 500*l.* that this attack upon Mr. Gwynne had happened.— This confidential conversation with a friend at the time of the riot, without any expectation it could ever be repeated in evidence, and which was brought out by the questions of the Prosecutor, will shew to the Court how little consonant with my wishes such an assault could be.

“ The Prosecutor has taken up much of your time, and also greatly swelled the minutes of your proceedings, by observations on erasures and fresh insertions in the muster-rolls of January, 1788 ; and he argues much, that as the muster-rolls do not exactly correspond in the precise numbers of the deserters in each company with those mentioned in the monthly return of the 1st of December, 1787 ; that therefore those erasures must be made after the muster. And he seems to insinuate that the monthly return was given in when

I had not any suspicion that there would be an enquiry into my conduct, and was therefore correct and regular ; but that I had received intimation of such investigation before the muster was made, and therefore that I had those alterations made in the muster rolls, lest it should appear on the face of them, that the men had not deserted at the time the Civil Power demanded them. In truth, I think this ingenious argument deserves but one answer to shew its absurdity, and that is, if I intended to have done what the Prosecutor alleges, I would have got new muster rolls made out on which no erasures would appear. Here give me leave to mention a few facts, which I make no doubt will clear up all these difficulties started by the Prosecutor, the experience of every member of this Court must shew him ; and the evidence of Mr. Byrne, the Commissary of Musters proves the fact, that it is no unusual thing to see erasures on the face of muster-rolls, owing to the inaccuracy of the Serjeants by whom they are written ; therefore, so far as relates to any officer of the 9th regiment respecting these erasures, they will, I trust stand acquitted of any criminality on that head.

“ I have now in my hands, muster-rolls in which no fraud could be intended, with full as many erasures as those produced to you by the Prosecutor. And if a fraud of that kind had been intended, it must have been inevitably detected in the office to which these resolutions and muster-rolls are transmitted.

“ But the Prosecutor must fix a stigma, either on the Commissary of Muster, or on the Muster-Master General himself, in order to support his assertion. For you will please to observe how the facts appear from Captain Smith, the Pay-master's evidence ; he has informed you, that on the 13th of November those men had deserted, and were struck off
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the strength of the regiment that day—that they had received their week's subsistence the preceding Saturday in full to 16th inclusive, and that he had returned to the Agent the pay from the 16th to the end of the month. Now these three facts appear. First, that the men actually deserted the 13th. Secondly, that they were *then* struck off the strength of the regiment. And thirdly, that the Pay-master returned to the Agent their pay, from the 16th to the end of the month.

“ The Prosecutor admits that the month had not been altered on the muster-rolls ; but that the 30th had been mutilated to the 13th. It appears on the face of them, that on the 30th several men had deserted, and several had been discharged ; and therefore it is very probable, this additional circumstance might have occasioned the radical mistake, of the correcting of which the Prosecutor so heavily complains.

“ He has stated a variation between the muster-roll of January, 1788, and the monthly return of the December preceding ; by which it appears, that a greater number in some companies, appear on the muster-roll deserted in November, 1787, than appear on the monthly return to have deserted from that particular company. Every member of the Court knows, that when drafts are received to compleat a regiment, and additional companies from eight to ten are added, men must be drafted proportionally from the eight companies, in order to form the two additional companies ; and it is an invariable rule, that the drafts which are received from other regiments to make the ten companies compleat, are in equal proportions added to each company. The 9th regiment in the beginning of November was encreased to ten companies, agreeable to this regulation, and on the 1st of December a monthly return was sent to the Adjutant-General's

neral's office, in which the entire ten companies were inserted agreeable to the change that had taken place; however the Adjutant-General sent back this return, and directed to have a new one given in, comparing the state of the regiment as it would be, if no drafts from other regiments or additional companies had been made, as it was the intention of Government, that the drafts should remain in the strength of the regiments from which they were taken until their embarkation, at which time the entire regiment would be on the British establishment. In pursuance of those directions a new return was made, and those men who had been drafted from the eight companies, in order to compose the two additional companies were equally divided between the eight companies, without paying any attention to their situation, or to what companies they particularly belonged before the increased companies were made. However when the muster-rolls came to be made out on the 7th of January, 1788, the Serjeant of each company made out that roll, exactly as the former rolls had been, before the increased companies putting the men on the roll of the companies to which they belonged at the former muster before they were drafted.

"The Prosecutor has alleged, that it appears on the muster-roll taken on board the transports, that one John Cooper had been discharged, and that John Cooper was one of those accused by him. The fact however is not so, there were several of that name in the regiment, and this person who was discharged was a recruit, who was found on inspection unfit for service; and at the time that muster was made, the John Cooper he has accused was in the jail of Cork.

This strong circumstance appears on the muster rolls, that the gross number of deserters for November, 1787, was seventeen, and the like number
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ber appears on the monthly return, which I should hope would evince to the Court, that there was no fraudulent attempt in this case.

“I have taken up much of your time in reconciling the errors which the Prosecutor would insinuate appear on the muster-rolls, and I have done so, in order to wipe away any imputation of unfair practices in this regiment, and to justify absent officers, as well as to remove any idea the Court may entertain of the want of regularity and attention in any officer in the regiment, to that very necessary and important part of their duty. But I submit to the Court, that as no charge has been exhibited against me for a false muster, I have no occasion whatsoever of entering into any detail, in order to ascertain their regularity; and if there was such a charge, I need only support the muster of my own company, and could not be answerable for the muster-rolls of any other company in the regiment. However, if any doubts remain with the Court, respecting the accuracy of the muster-rolls, I can produce an extract from the regimental Casualty Book, properly attested, by which it will appear, that the time of the desertion of those men as appearing on the muster-rolls, corresponds with the entry in that book. The book itself is with the regiment, which confines me to the producing an extract from it.

“I have now considered the several charges, and the evidence called in support of them, and in this I have occupied much of your time and attention, because it is upon that evidence I principally rely for my exculpation.

“A man is sometimes indebted to his enemies, and I must deem myself fortunate, that the Prosecutor, in his efforts to make me appear criminal, has called so many strong witnesses, to prove me innocent.

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" If Mr. Gwynne had come forward upon this occasion, from motives of public justice, and impressed with a belief (however erroneous) of my guilt, the Prosecutor might fail without any reproach to himself; many an innocent man is accused, whom the Prosecutor really believes to be guilty; but I am apprehensive, that no such excuse can be pleaded in favour of him who now prosecutes me.

" A Court of Enquiry was held on me, in the month of November last, at the instigation of Mr. Gwynne, for a false muster. After a full investigation of that subject, the Court unanimously acquitted me of the charge, and thought proper to add, that they were clear, that perjury did exist; but were clear that the perjury did not lye with Colonel Campbell, or the evidence adduced on his behalf.

" To this enquiry, Mr. Gwynne could not have been instigated by any zeal for the service. He was then unconnected with the army, having been dismissed before that time by the sentence of a Court-martial, for unmilitary and ungentlemanly behaviour. He had no private difference with me, as I could know. I was not even the officer against whom he behaved in that unmilitary manner, which produced his dismissal; so that he procured that Court of Enquiry to be held on me, without either public zeal or any private difference. And it was at that Court of Enquiry in which he attacked the character of many of the non-commissioned officers of the regiment; but the prosecutions which he thus wantonly commenced against me, he has uniformly pursued.

" In the month of January last a Court of Enquiry was held at Cork, in consequence of the imputation cast upon me by Mr. Gwynne. The subject matter of their consideration was nearly the same, as that which has so long occupied your attention.

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“ A Court of Enquiry is certainly not possessed of the power of a Court-martial ; but the Court of Enquiry held in Cork, had some advantages to compensate for the want of power. It was held for several days, in the very place where my offences were alleged to have been committed, before Colonel Lind, the Commanding Officer of the garrison. The Mayor and one of the Sheriffs attended before that Court, and declared their sense of my conduct on *this* occasion. The soldiers themselves were examined in jail by the members of that Court. Several officers of rank, were also examined there, and the Court at last gave their opinion, that I had not any knowledge of, or concern in the assault that was made upon Mr. Gwynne ; but on the contrary, had taken every step in my power, as Commanding Officer of the regiment, to prevent it. That no doubt remained with the Court, that the cause of Mr. Gwynne's being assaulted, was his bad usage of the soldiers, and the attack he made on the characters of the non-commissioned officers at the former Court of Enquiry.

“ They further declared it as their opinion, that I was not in the most distant degree accessory to the escape of Moore ; and that I did not screen any deserters, but that my reasons for not advertising these deserters or sending parties after them, appeared to them to be quite satisfactory. These are the words of that Court, as far as their opinion relates to me. Such an opinion would have satisfied a man, whose object was public justice, but Mr. Gwynne was not easily to be deterred.

“ He then swore informations before the Mayor of Cork, and preferred bills of indictment against me to the Grand Jury of the city of Cork, charging me with a conspiracy to take away his life, and instigating the soldiers to that attempt. So little foundation did they see for the charge, that they

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ignored the bills; they did not even think there was ground enough to put me upon my trial, although a Grand Jury bears no evidence but on the part of the prosecution.

"Thus had he the opinions of both Civil and Military tribunals, informing him that they considered me as perfectly free from the guilt he charged me with; still he persisted in loading me with calumny. He memorialled the present Chief Governor, and in that memorial, he recapitulated all the imputations of guilt which he had cast upon me before.

"This Court martial has been convened for the purpose of examining into my conduct, and it is to me a source of real satisfaction, that a Court invested with power ample enough to search into the truth, should scrutinise my actions. If I have been in any respect culpable, to you it must have appeared.

"During the period I have served his Majesty, my character has stood unimpeached, except by the Prosecutor; and it rests with you as my judges, to determine, whether the general opinion which has been formed, or the present accusation, is the best founded.

On my part, I shall trouble you with very little evidence, and that little shall consist of some written instruments which cannot err. A kind of evidence that can neither be tutored nor tampered with, and which will remain the same to-morrow as it is to-day.

"Should this Court pronounce a sentence of acquittal, that honourable testimony in my favour, will reward me for what I have already suffered. It will wipe away, I hope, even the suspicion of guilt, and leave my good name, as unsullied, as I trust it was before.—My Prosecutor attempted to stain it; but that gentleman will not be even, then,
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be without some degree of consolation. He must know that his attacks upon me, have put me to considerable expence; but pecuniary considerations are of little avail, when compared with the other consequences of these attempts. I have been prevented by his proceedings, from embarking with the regiment entrusted to my command, at the time it was ordered abroad; and I have thus been deprived of the means of testifying my zeal for the service, and my gratitude to my Sovereign, for the respectable rank to which he has been graciously pleased to advance me.

"Whatever comfort the Prosecutor may derive from such reflections, he is fully intitled to enjoy.

"I shall not, my Lord and Gentlemen, trespass upon you any longer. I return you my humble acknowledgments for the attention you have vouchsafed me, and I shall leave my honour in your hands, with a perfect confidence, that the sentence you pronounce, will be the dictate of your conscience."

Colonel Campbell produced in evidence two affidavits, one sworn by the Mayor of Cork, and the other sworn by the Sheriffs of said city.

Mr. Gwynne objected to their being received in evidence, alleging, that all depositions by affidavit, in all cases, where the persons are able to attend, are inadmissible, and that the personal attendance of such persons who make those affidavits is absolutely necessary; and therefore, in his prosecution he acted accordingly, and produced no affidavits, knowing from the best authority, that they ought not to be received; and therefore he requested, those offered by Lieutenant-Colonel Campbell might be rejected.

The Court being cleared, and having deliberated on the peculiar situation of the Mayor and Sheriffs of Cork, who make those affidavits, and whose attendance it is impossible to procure, either by compulsion or otherwise, do, from the consideration of those circumstances, admit the said affidavits of the Mayor and Sheriffs of Cork as evidence, being properly proved.

John Hewson, Esq; being called on by the Prisoner, and duly sworn.

Question by the Judge Advocate. Do you know James Kingston, of Cork, whose name is signed to the affidavit shewn you?

A. I do.

Question by Ditto. Is he in any public office at present, in that city?

A. He is Mayor of Cork.

Question by Ditto. Do you know Jeffery Persey and Rowland Morrison, whose names are signed to the affidavit shewn you?

A. I do.

Question by Ditto. Are they in any public office, in the city of Cork?

A. They are High Sheriffs of the city of Cork.

Question by Ditto. Did you on the behalf of Lieutenant-Colonel Campbell, and as agent for him, apply to James Kingston, Mayor of Cork, and Jeffery Persey and Rowland Morrison, High Sheriffs of the said city, to give their personal attendance before this Court, to give evidence on the part of Lieutenant-Colonel Campbell?

A. I did repeatedly.

Question by Ditto. Did Lieutenant-Colonel Campbell apply to the Judge Advocate by himself, or any other person on his behalf, for summonses to require

quire the attendance of the gentlemen above mentioned?

A. No; because I knew very well, that the summonses of this Court would prove ineffectual, as they were not by law bound to obey them.

Question by the Judge Advocate. On your applying to those gentlemen to attend, did they give you any reason why they would not attend; and if they did, what were they?

A. They told me, on my application to them, that their respective offices required their constant attendance in Cork, and that they could not, consistent with their duty, as Mayor and Sheriffs of Cork, quit it at this critical time, in consequence of the approaching assizes, and the great weight of business their respective offices involved them in at that time.

It being three of the clock, the Court adjourned till Wednesday morning, at eleven o'clock.

WEDNESDAY, 6th AUGUST, 1788.

[11 o'Clock.]

The Court met pursuant to adjournment, and proceeded on the examination of Mr. Hewson.

Question by the Judge Advocate. On their refusing to attend, did you take any steps, and what were they?

A. I told them that as they could not give their personal attendance, that I hoped they would have no objection to reduce into an affidavit, what they knew of the transaction, for which Colonel Campbell was to be brought to a trial—They said they would, with the greatest cheerfulness.

Question

Question by the Judge Advocate. Did you hold any inducement to them, farther than you have mentioned, to influence them to make those affidavits?

A. No; I did not.

Question by Ditto. Are you a subscribing witness to the affidavits, signed James Kingston, marked (A) and sworn before John Travers, one of the Aldermen of the city of Cork?

A. I am.—This affidavit was sworn by James Kingston, Mayor of the city of Cork, before John Travers, one of the Aldermen of said city, in the presence of William Jones, Town Clerk of the city of Cork, and of me, at the Tholsel of said city.

Question by Ditto. Do you see the name of William Jones, signed as a subscribing witness to an affidavit marked (B) sworn by Jeffery Persey and Rowland Morrison, before James Kingston, Mayor of said city?

A. I do.

Question by Ditto. Do you know his hand writing?

A. I do.

Question by Ditto. Is that the hand writing of William Jones, Town Clerk of Cork?

A. It is.

Question by Ditto. Were you present when this affidavit marked (B) was sworn by Jeffery Persey and Rowland Morrison, and signed by William Jones, Town Clerk?

A. I was.

The Court now thinking the two affidavits sufficiently proved, admitted them to be inserted on the proceedings, and the following is a copy of them, viz.

County

County of the } **THE Right Worshipful James**
City of Cork. } Kingston, Esq; Mayor of Cork, mak-
 eth oath, that on or about the 13th day of Novem-
 ber last, informations were sworn before this Depo-
 nent, by Mr. Daniel Gwynne, whereby the said
 Daniel Gwynne did charge Stephen Reilly, serjeant
 in his Majesty's 9th regiment of foot, then quarter-
 ed in Cork; John Philby, and another foldier in
 the said regiment, with a riot and assault on the said
 Daniel Gwynne, on the said 12th day of Novem-
 ber, then instant; and this Deponent saith, that this
 Deponent did grant a warrant to take and apprehend
 the said Reilly and Philby, and said other soldier,
 so accused of said riot and assault; and this Depo-
 nent saith, that the said persons when they were de-
 manded by the Civil Power, were as Deponent heard
 and believes, for the purpose of their more secure
 delivery to the Civil Power, attended by Lieutenant-
 Colonel John Campbell, of the same regiment, to
 the gaol of the said city. This Deponent saith, that
 on or about the 16th day of November, aforesaid,
 further informations were sworn by the said Daniel
 Gwynne, against several other foldiers in said 9th
 regiment, charging them with being concerned in
 said riot; and this Deponent saith, that he in like
 manner granted his warrant on said information, to
 apprehend said persons, who were all afterwards, as
 Deponent heard and believes, committed to the gaol
 of said city, and stood their trials for the offences
 they were charged with. This Deponent saith, that
 this Deponent was sworn into the office of Mayor
 of said city, on the 1st day of October last; and this
 Deponent saith that from the time of his said coming
 into office, during the stay of the said regiment in
 Cork, the said John Campbell, as far as came within
 this Deponent's knowledge, gave every aid and assist-
 ance within his power as a Commanding Officer, to
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the Magistrates in the preservation of the peace of said city.

Sworn before me at the city of Cork, this 10th day of July, 1788.

JAMES KINGSTON.

JOHN TRAVERS,

One of the Aldermen of the city of Cork.

At the Tholsel, in the presence of

WILLIAM JONES, Town Clerk,
and of

JOHN HEWSON,

Of the city of Dublin, Attorney at Law.

County of the City } JEFFERY Persey and Row-
of Cork. } land Morrison, Esqrs. High She-
riffs of the city of Cork, make oath, that in consequence of informations, sworn by Daniel Gwynne, before the Mayor of said city, charging Stephen Reilly, a serjeant in his Majesty's 9th regiment of foot, and John Philby and Thomas M'Grath, private soldiers in said regiment, with a riot and an assault on the said Daniel Gwynne, on the 12th of November last, these Deponents, on the 14th day of November last, applied to Major General Patterson, then Commander in Chief of the province of Munster, as these Deponents believe, and who then resided in the city of Cork, to have said persons delivered up to the Civil Power; who in consequence thereof, as Deponents believe, directed Colonel John Lind, Commanding Officer of the garrison of said city, to deliver over to Deponents the said Stephen Reilly, John Philby and Thomas M'Grath; and these Deponents say, immediately on such application, the said John Lind applied to John Campbell, Esq; the Lieutenant-Colonel, and the then Commanding Officer of the said regiment, to deliver over said persons to Deponents; and these Deponents say, that the said John Campbell, not only delivered up said persons so accused to Deponents, but also, as
Deponents

Deponents believe, for the purpose of effectually assisting the Civil Magistrates in the execution of the laws, did attend the said persons with these Deponents to the gaol of said city, where the said persons so accused were lodged. These Deponents say, that on or about the 16th day of November, aforesaid, further informations were sworn, as these Deponents heard and believe, by the said Daniel Gwynne, before the Mayor of said city, charging Robert Farquar, a serjeant in said regiment, and several privates thereof, with being concerned in said riot and assault; and these Deponents say, that by the directions of the Mayor of Cork, these Deponents applied to the said Major General Patterson, to deliver up to the Civil Power, the said several persons so accused, by said Daniel Gwynne; but these Deponents say, that at that time, or on that occasion, these Deponents did not make any application to the said John Campbell, to deliver over to these Deponents, the persons so accused by the said Daniel Gwynne in said informations; but these Deponents say, that on the day when they, as aforesaid, demanded the persons so accused as aforesaid, from the said General Patterson, they received a letter from the said General Patterson, wherein he informed these Deponents, that he had applied to the said John Campbell to deliver to the Civil Power, the persons so accused of said riot and assault, by the said Daniel Gwynne; and that the said John Campbell, had on such application informed him, that the said several persons had deserted; and these Deponents say, that from the time Deponents were sworn into office, and during the whole time the said John Campbell was quartered in Cork, with the said regiment, whenever any application was made by these Deponents, to the said John Campbell, to afford any assistance to the Civil Power, the said John Campbell, with every readiness, always complied,

and seemed desirous of giving such assistance, as these Deponents say, they never made any application (save as aforesaid) to the said John Campbell, to deliver up to these Deponents, or to the Civil Power, the persons accused by the said Daniel Gwynne, as aforesaid.

Sworn before me at the city of Cork, this 10th day of July, 1788.

JAMES KINGSTON, Mayor
of the City of Cork, at the Tholsel, in presence of
JEFFREY PERSEY. WILLIAM JONES, Town Clerk.
ROWLAND MORRISON.

Colonel *Campbell* desired to produce in evidence, the minutes of two Courts of Inquiry held in the city of Cork; one in November, 1787, and the other in the month of January, 1788, and the Judge Advocate, by the direction of the Court, informed Colonel Campbell, that such evidence would not be received. He likewise requested to produce in evidence, the minutes of a Court-martial, held on the centry who suffered Moore to escape, but as he could not sufficiently authenticate the same, the Court would not admit it as evidence. He also requested to produce in evidence, an extract from the regimental book of the 9th regiment, which the Court also rejected, not being duly authenticated.

Mr. *Hewson* was called on by the Court, to prove the hand writing of John Snow, subscribed to the parchment which Mr. Gwynne, the Prosecutor, produced to the Court, and which at the time of producing, he alledged to be the record of conviction, of several persons accused of committing an assault upon him, in the city of Cork, on the 12th of November, 1787.

Question

Question by the Court. Do you know John Snow, Clerk of the Crown, whose name is signed at the foot of the writing now shewn you?

A. I do.

Question by Ditto. Is that the hand writing of Snow himself?

A. I believe it is.

Question by Ditto. Have you often seen him write?

A. I have.

Question by Ditto. Do you believe that to be the original record of the Commission of Gaol Delivery, of the county of the city of Cork?

A. I do not.

Question by the Court to Mr. Gwynne. Did you not deliver the parchment now before the Court, as the original record?

A. I did; and in explanation Mr. Gwynne requests to put some questions to Mr. Hewson, the evidence.

Question by Mr. Gwynne. Do not all the proceedings, except the indictment, remain in the Crown Office in paper, with the Clerk of the Crown?

A. I can't say they do. I believe there may be some proceedings on parchment exclusive of the bill of indictment.

Question by Ditto. Do you know any instance of a record made up on parchment, and signed by the Clerk of the Crown and under seal, but by special application from some of the parties, or by the order of a superior Court?

A. I know no instance of the original record being removed, except by the order of a superior Court. I believe a transcript of the record properly authenticated, may be obtained by any person paying the Clerk his fees.

Question by Ditto. Would the parchment before the Court, tendered to the Court as a record, if properly removed by Certiorari, and thus authenticat-

ed, be in your opinion the record of the conviction of the several persons therein named?

A. If a Certiorari issued, I believe the Clerk of the Crown would send up the original; and also make up a transcript of the record, in the manner now before the Court.

Question by Ditto. Is it not the practice, where a person has been before tried and acquitted, or convicted, for the Clerk of the Crown to give him the original record, and must he not have it in his hand to plead it at bar, and on a plea of *Auterfoits* convict or *Auterfoits* acquit?

A. I believe the transcript of the record would be evidence of the fact.

Question by the Court to Mr. Gwynne. Do you believe this parchment to be the original record or a transcript?

A. I believe it to be the original record, and as such it was transmitted to me.

Lieutenant-Colonel *Campbell* here called for a return of deserters, for November and December last, which not being authenticated, the Court rejected. Now Colonel *Campbell* having closed his defence, the Prosecutor desired leave from the Court to make a reply, which being granted, he produced a paper, out of which he read his reply, in which were reflections on some members of the Court; gross misrepresentation of facts, which had been laid before the Court; and also personal reflections on several persons unconnected with the matter before the Court.—He was directed to take back and revise the said paper, and had a day extraordinary allowed him for that purpose, and it being three of the clock, the Court adjourned till Friday morning, at eleven o'clock.

FRIDAY, the 8th AUGUST, 1788.

[11 o'Clock.]

The Court met pursuant to adjournment.—And on Mr. Gwynne's giving in his reply, Colonel Campbell asserted the latter part of it, (containing new matter of accusation, with regard to circumstances which he said happened at Cork) to be a gross falsehood, and offered to give evidence to that effect. He was stopped from proceeding by the Court; and the Court was cleared, and being again opened, the President addressed Mr. Gwynne, in the following words :

“ S I R,

“ AFTER the Court had expressed its opinion,
 “ of the very unusual hardness of the person coming before them in the shape of a Prosecutor,
 “ claiming justice at their hands, presuming to insert in a paper, out of which he read his reply, a
 “ premeditated and personal attack upon the persons of some of the members of the Court-martial;
 “ which paper in that state being inadmissible, and returned to you to correct, and receiving assurances from you, that nothing objectionable should
 “ be repeated, the Court did apprehend, it was secure from any attempt of such a nature on this
 “ day; and therefore it was, that the Court was taken by surprize, and did not interrupt you,
 “ whilst you were pronouncing that unwarrantable and personal attack upon an officer on his trial,
 “ and entitled as well as yourself to its protection.
 “ When you had finished, you were then, and not till then, asked how you could think proper
 “ to vent such a personal attack, totally irrelevant
 “ to

“ to the matter in question, and you replied, you
 “ would not have descended to personality, if the
 “ Lieutenant-Colonel had not set the example in his
 “ defence, though the Court was clear that they
 “ had not, and could not have suffered any thing
 “ objectionable to have been uttered in the face of
 “ the Court. They have since carefully revised the
 “ defence of Lieutenant-Colonel Campbell, and are
 “ well warranted in telling you, that nothing ob-
 “ jectionable is therein contained; and therefore
 “ the Court is of opinion, that though no language
 “ or conduct of yours, can prejudice you, with
 “ respect to the claim you have on their justice, in
 “ the decision of the case before them; yet they
 “ must lament that as you have by the sentence of
 “ a Court, similar to this, been dismissed the ser-
 “ vice, you are out of their reach to punish; and
 “ that therefore, you may enjoy the satisfaction, if
 “ satisfaction it is to you, of having insulted with
 “ impunity, a Court of Justice and of Honour, and
 “ of having in the face of the public thrown out a
 “ defence tending to a breach of the peace; safe
 “ in having so done, as the power of the Court is
 “ sufficient to prevent the prisoner, either from an-
 “ swering or resenting such an unwarrantable at-
 “ tack.”

*[Mr. Gwynne's reply is annexed to the proceedings,
 marked No. II.]*

The Court then called on Colonel Campbell, for-
 bidding him to reply, and directing him to give his
 honour, that he would not take any notice of what
 had fallen from the Prosecutor.

The Court then adjourned till to-morrow morn-
 ing, at eleven o'clock.

SATURDAY,

SATURDAY, AUGUST the 9th, 1788.

[11 o'Clock.]

The Court met pursuant to adjournment, and read and compared the fair copy with the original, and then adjourned till Monday morning, at eleven o'clock.

MONDAY, AUGUST the 11th, 1788.

[11 o'Clock.]

The Court met pursuant to adjournment, and having deliberated on their proceedings till three o'clock, adjourned till to-morrow morning, at eleven o'clock.

TUESDAY, AUGUST the 12th, 1788.

[11 o'Clock.]

The Court met pursuant to adjournment.

The Court having taken into consideration the first article of complaint and charge, viz.

I. FOR that the said Lieutenant Colonel John Campbell did not deliver up, or use his utmost endeavours to deliver up, to the civil magistrates of the city of Cork, several soldiers of the ninth regiment of foot, then commanded by the said Lieutenant Colonel Campbell, who, on the 12th day of November, 1787, had committed a riot in said city, and had assaulted and wounded Mr. Daniel Gwynne,

Gwynne, (late lieutenant in said regiment) altho' application was duly made on behalf of the said Mr. Daniel Gwynne by such civil magistrates for that purpose ; and having weighed the evidence in support of the charge, with that produced on the part of the prisoner, is of opinion, that he the said Lieutenant-Colonel John Campbell, is not guilty of this article of charge : It appearing in evidence, that he did deliver over such soldiers of the 9th regiment as were charged with the assault on Mr. Gwynne, when duly applied to for that purpose, by the civil magistrates.

The Court having taken into consideration the second article of complaint and charge, viz.

II. For that the said Lieutenant Colonel John Campbell did not aid or assist the officers of justice in apprehending and securing the several or any soldiers, so accused, in order that they may be brought to trial ; and having weighed the evidence given in support of the charge, with that produced on the part of the prisoner, is of opinion, that he the said Lieutenant-Colonel John Campbell is not guilty of this article of charge.

The Court having taken into consideration the third article of complaint and charge, viz.

III. For that the said Lieutenant Colonel John Campbell did permit several of the said soldiers, so accused, to quit their quarters and barracks in the city of Cork, although the said Lieutenant Colonel John Campbell well knew they were so accused ; and having weighed the evidence given in support of the charge, with that produced on the part of the prisoner, is of opinion, that he the said Lieutenant-Colonel John Campbell is not guilty of this article of charge.

The

The Court having taken into consideration the fourth article of complaint and charge, viz.

IV. For that the said Lieutenant-Colonel John Campbell did knowingly permit or connive at several of said soldiers, so accused, absenting themselves from their quarters and barracks, and secreting themselves, in order to prevent their being apprehended by the officers of justice, and being brought to trial for said riot and outrage ; and having weighed the evidence given in support of the charge, with that produced on the part of the prisoner, is of opinion, that he the said Lieutenant-Colonel John Campbell, is not guilty of this article of charge.

The Court having taken into consideration the fifth article of complaint and charge, viz.

V. For that the said Lieutenant-Colonel John Campbell well knew where several of said soldiers, so accused, were secreted, yet did not apprehend, or endeavour to apprehend, any of them ; and having weighed the evidence given in support of the charge, with that produced on the part of the prisoner, is of opinion, that he the said Lieutenant-Colonel John Campbell, is not guilty of this article of charge.

The Court having taken into consideration the sixth article of complaint and charge, viz.

VI. For that several of said soldiers, after they were so secreted, were permitted free access to and from the barracks where said ninth regiment was then quartered, without said Lieutenant-Colonel John Campbell's using his endeavours, or taking any step whatever, to have the said offenders, or any of them, apprehended or brought to trial ; and having weighed the evidence given in support

of the charge, with that produced on the part of the prisoner, is of opinion, that the said Lieutenant-Colonel John Campbell, is not guilty of this article of charge, it not appearing by the evidence that he did know of their being concealed in the Barracks.

The Court having taken into consideration the seventh article of complaint and charge, viz.

VII. For that the said Lieutenant Colonel John Campbell, while said soldiers so continued secreted and absent from their regiment, did supply them, or some of them, with money; and having weighed the evidence given in support of the charge, with that produced on the part of the prisoner, is of opinion, that the said Lieutenant-Colonel John Campbell, is not guilty of this article of charge.

The Court having taken into consideration the eighth article of complaint and charge, viz.

VIII. For that the said Lieutenant Colonel John Campbell did permit, allow of, or cause several sums of money to be paid for the use of the said soldiers, or some of them, to the persons who harboured them while they were so secreted and absent from their regiment; and having weighed the evidence given in support of the charge, with that produced by the prisoner, is of opinion, that the said Lieutenant-Colonel John Campbell, is not guilty of this article of charge.

The Court having taken into consideration the ninth article of complaint and charge, viz.

IX. For that the said Lieutenant Colonel John Campbell did not deliver over to the civil magistrates of the city of Cork, on the 29th day of December, 1787, the body of William Moore, a soldier in said ninth regiment, who was accused of
said

said riot and outrage, although the said Moore was
 on the 29th day of December sent a prisoner from
 Charles-Fort for the express purpose of being given
 up to the civil magistrates at Cork, to be tried for
 said riot and outrage, and was on said day delivered
 over a prisoner to the custody of a regimental
 guard of said ninth regiment, under the command
 of Lieutenant Colonel Campbell, as commanding
 officer of that regiment, and garrison field officer
 of the day for said 29th day of December, although
 said Moore continued a prisoner in custody of said
 guard for several hours; and having weighed the
 evidence given in support of the charge, with that
 produced on the part of the prisoner, is of opinion,
 that he the said Lieutenant-Colonel John Campbell
 is not guilty of this article of charge; it appearing
 in evidence that no report was made to Lieutenant-
 Colonel Campbell, of William Moore being a pri-
 soner in the regimental Guard-house; and that
 Lieutenant-Colonel Campbell brought to trial, by
 a Court-martial, the soldier who suffered Moore to
 escape; and the Court does therefore honourably
 acquit the said Lieutenant-Colonel John Campbell
 of the first, and every other article of charge ex-
 hibited against him, by the said Mr. Daniel Gwynne.

The Court trust it does not exceed the limits of
 its duty, in humbly stating to his Excellency the
 Lord Lieutenant, that although on the strictest in-
 vestigation of the evidence produced in support of
 the several charges, brought against Lieutenant-Co-
 lonel Campbell, they have fully acquitted him of
 each and every one of them; they nevertheless
 feel the utmost concern, that it appears in evidence
 before them, that the perpetrators of such an out-
 rage, as that committed on the person of Mr.
 Gwynne, should find abettors among some of the
 soldiery, so as to conceal them in the Barracks, and
 to connive at their being privately in the town of

Cork, for the purpose of screening them from that punishment, which such an audacious infringement of the law justly merited.

CARHAMPTON, President.

FRANCIS PATTERSON,
Judge-Advocate-General.

The Court adjourned till further orders.

Judge-Advocate's Office, 11 Dec. 1788.

(A true Copy.)

J. ATKINSON.

No. II.

“ My Lord and Gentlemen,

“ Having so long trespassed on your patience and attention, I fear to call to your recollection the grounds which I have laid before you, during this prosecution, and which with humble confidence, I insist were not only sufficient to warrant it, but ought to satisfy the minds of the Court, that the gentleman whom I prosecute ought to be convicted. But when I reflect that it dropt from your Lordship, in the course of this prosecution, that I have been an injured man; your Lordship and the Court will hear me with a dignified patience becoming your elevated situation, and not only on the behalf of the army of Ireland, of which I may not improperly call this honourable assembly the representative, but also to satisfy the minds of the people at large, that the hands of justice are strong enough for military turbulence, and are long enough to lay hold of offenders, however by art they may endeavour to elude, however by situation, they may have the means of screening themselves; and will thereby convince the public, that though injury be clamorous, justice is silent, patient and attentive.

“ Before I commenced this prosecution, I was well aware that I had another tribunal to apply to, which was every way competent to decide upon this subject, and whose decision must have been final and conclusive upon your Lordship and this court; but I avoided that tribunal, that it might not be said, that I had resorted to another description of men to try Lieutenant-Colonel Campbell, and avoided bringing him before that class to which he belonged.—No, I scorned any thing that might seem to give me an advantage.—I applied for justice to his

his Excellency the Lord Lieutenant, and by his order Lieutenant-Colonel Campbell is now brought before a Court, where his Judges are in every sense of the word, his Peers.

“ The length of time that you have sat, and the patience that you have manifested, will shew the importance of your enquiry, and let the publicity of the wrongs I have sustained be as great, as the original offence was daring.”

“ My Lord, the fact which gave rise to this prosecution, and which has been admitted, happened on the 12th day of November last at Cork, when an outrage, unprecedented perhaps in the history of assassination, was perpetrated. In open day light, I was attacked in the city of Cork, by a number of military ruffians, who have been proved, and admitted, to belong to the 9th regiment.

“ It has been given in evidence by Major-General Patterson, that I was aware of the machinations of those who intended to attack me, and that I claimed protection from this premeditated attack. The General informed the Court, that he told me my fears were groundless; and, that I might rely on the goodness of the discipline of the army. How well the General was acquainted with the discipline of the 9th regiment, my case will best testify; though to be sure, had he at that time the spirit of prophecy—were he gifted with the second sight, boasted of in Scotland, and had only the example of the few of that regiment who appeared to give evidence here, and had concluded from thence how well they would demean themselves in the field, he must have concluded the 9th regiment the best disciplined corps in his Majesty's service.

“ It appeared in evidence from the same respectable authority, that not only immediately, but several times after this outrage was committed, the Civil Magistrates applied to the Major-General for the perpetrators

perpetrators of the crime, and that the Major-General applied to Lieutenant-Colonel Campbell for these men. True it is, the Major-General said that Lieutenant-Colonel Campbell returned these men as deserters, as soon as he could go to and return from the regiment with his report; but suffer me, my Lord, to look at the probable truth of the return. In the number of these supposed, of these alleged deserters, are three serjeants and the servant to Lieutenant-Colonel Campbell himself. Is it likely that men distinguished by being made non-commissioned officers,—is it likely that Lieutenant-Colonel Campbell's servant should desert? I speak before military men, and I wish to ask if they have known an instance of a servant's desertion, who had not been accused of robbing his master? In the course of my military experience, and I have seen some service, I do not recollect an instance of the kind. Is it possible that men of this description would unadvisedly mix in such an affray? That unsupported they would retire from consequences which they had little reason to fear? It may not be unworthy of observation too, that it appeared upon the Major-General's being cross questioned, that three of the soldiers were on the first application delivered up to the Civil Magistrate! It is very true, but the Lieutenant-Colonel on that occasion seemed to be better acquainted with the Roman military code of decimation, than the British or Irish acts against mutiny and desertion, or the articles of war. He let the gross majority of the offenders escape while the small minority were delivered up to the custody of — whom?—their bail—for three foot soldiers had interest enough to procure bail!—A gentleman who once had had a majority, and who then supplied the regiment with wine; and a man who had a contract from the regiment to supply it with shoes, became their sponsors.

“ A happy

“ A happy instance, and perhaps singular in civil inquiries, that military offenders who had acted against the inclination and the wishes of their officers could find bail in so large a sum as 200l. each.

“ That the Major-General was satisfied with the conduct of Lieutenant-Colonel Campbell, as he declared to your Lordship and the Court, I can have no doubt. Nor can you much scruple in assenting to the truth of that declaration, when the answer, which he gave me through Colonel Lind, and of which the Colonel repeated the substance is remembered; it was “ I have it in command from General Patterson, to inform you that he has read “ your letter to me, and desired me to inform you, “ that as the civil law is now open to you, he desires not to be troubled any more on the subject.”—From one *who had seen the world*—from one who had seen service, this would seem perhaps an unnecessary snouch.—A gentleman is offended by the military—he applies for military redress—it will be readily granted to be not frequently the practice of military men to wish to subject the soldiers to the Civil Power; and if upon this occasion they had been delivered to it, the trouble I am now giving the Court would have been avoided; but they were not delivered to the Civil Magistrate—they were not taken by the military—they had deserted, and then I might apply to the Civil Law.—But it must be allowed Major-General Patterson has original ideas of military discipline. I shall not take up the time of the Court with any further observations on Colonel Lind’s testimony, save to remark that a question which seemed to affect Major Dalrymple was asked by me and waived from the suggestion of the Court, that it was improper to give any thing in evidence against a person not upon his trial.—Whether this be law or not I shall not take upon me to say; but if the trial of Lieutenant-Colonel Campbell

bell is to be a precedent of what is law in Courts-martial, it was afterwards ruled to be law : For when I asked Captain Boyle, by whose directions were these foldiers so put on board the Zebra ? It was objected that " This was an improper question, as might " tend to criminate a person against whom no charge " was made." By what spirit of prophecy the member found out whether the person alluded to was civil or military, and if civil how it could tend to criminate him, I am at a loss from the question, thus proposed, and thus generally put to guess—but so it was, that the objection was of that importance, that the Court was cleared, and after a consideration of more than an hour, were of opinion that the question was improper, as it might tend to affect an officer against whom no charge was made. How the Court could develope thro' the palpable obscure—through the darkness visible of the question, thus *generally modified*, whether I meant an officer either civil or military, or whether I meant any officer at all—I cannot guess. I had, it is true, asked a question particularizing a person—the Court over ruled it—I then put it generally. Was there any thing in that question to enable the Court to determine it to be attached to any particular person?—But the Court determined my meaning, and I was bound to submit to their interpretation of it, and of the law ; though I have been advised that such an opinion would be scouted in a court of Common Law. For suppose a man indicted for burglary—his comrades commit the burglary, and he participates of the plunder—they escape—he alone is taken.—By this evidence you shall not give evidence against the actual burglars, they being absent ; and therefore the man thus indicted must be acquitted.—A advises a murder, B perpetrates it, and escapes ; you shall not give evidence of B's perpetrating the murder against A, although you are able to prove the advertisement.

tisement. Instances of the absurdity of this rule, I am advised are innumerable. But my Lord, submission is my duty, and I trust through the course of this trial I have been able to shew that I was fully master of that duty.

“ I shall now with your favour, beg leave to point your attention to some part of the evidence of Captain Boyle, and the Purser of the Zebra; and I am sure it will be in the recollection of the Court, at least it must appear on its minutes, that nine soldiers whom the Captain after understood to belong to the 9th regiment, were put on board the Zebra to be taken care of, as they might be a loss to his Majesty's service, if they were not put into a place of safety, and that they were supported at the expence of the Government—and that it was publicly known at Kinsale—and four of their names were repeated by the Purser—and were the names of four of the men, convicted of the riot.—Is there a man existing will say, that had these men been deserters they would have been thus treated?—No.—Common sense, and common experience revolt at the supposition.—Why these nine soldiers should meet a different treatment from whatever any other soldiers who had deserted ever met with—Lieutenant-Colonel Campbell alone, and I believe he alone can explain; but he has disdained the explication of any charge that only circumstantially affected him; and relied on the impossibility of personally connecting him with these perpetrators of malicious mischief.

“ I have been told that among Lawyers, violent presumption from strong circumstances is held as full proof, and they say that the narration of a fact, may more easily be contrived than the concurrence of a number of circumstances, coinciding and meeting in one point—and if there were ever a number of circumstances indenting, and as it were dove-tailing one within the other, it is in the present case.—

Lieutenant-

Lieutenant-Colonel Campbell's Adjutant—four of his serjeants, his own servant attacked me—Why?—It is said I have been guilty of acts of cruelty to the soldiers, and that it appeared in evidence.—

“ This was but assertion—but it was a false assertion—and I rely upon even the evidence, that was proposed to prove it, by my adversary.—

“ But there were other circumstances which yet went farther, to shew that Lieutenant-Colonel Campbell had a personal knowledge of these men not being deserters, when he took upon himself to report them to be so.—I wish to do every honour to the Colonel wherever he has merited it. The instances in my mind are not many—one however I shall relate.—It is an order issued by Lieutenant-Colonel Campbell to the 9th regiment of foot at Edinburgh Castle, in the month of November, 1784, which is in substance as follows:—R. O. “ The Subaltern “ of the day (attended by a non-commissioned officer) is to examine the messes of each company “ (which are to be prepared by a man of each mess “ for that purpose) every morning immediately after “ the parade is dismissed; then to visit the Barrack “ rooms of each company, see that they, the passages and stairs belonging to them are clean “ swept, and the beds turned up, and to report “ immediately the state of messes, rooms, stairs, “ and passages, to the Commanding Officer. When “ the men's dinner drum beats, he is to visit each “ room and mess, see that all the messes have been “ cooked, receive the men's complaints (if any are “ made) and report every thing to the Commanding “ Officer. As soon as the retreat has beat he is to “ go his rounds, receive the taptoo reports, turn “ all soldiers out of the canteens, see that the canteens are shut up for the night, visit all the companies Barrack-rooms, see all fires and candles “ put out, which he is to mention (as well as any

“irregularity that may happen) in his taptoo report.
 “—He is likewise to go his rounds *once after eleven*
o'clock, and to visit every Barrack-room, and see
that every man is in his bed, to enquire the time the
men that were absent at taptoo came in, what men
are then absent, and report the same as well as the
hour he went his rounds, in his morning report to
 “the Commanding Officer.”

N. B. This order to be considered a standing order whenever the regiment is in Barracks.

“Now, my Lord, if Warrell's testimony is at all to be credited, which was “That some of these men so accused, slept in the Barracks for seven or eight nights,” does it not imply a conspiracy between all the subalterns and all the non-commissioned officers of the 9th regiment, to deceive their Lieutenant-Colonel and disobey his orders, and not do their duty?—But these men were protected from the Civil Power by a party of the 9th regiment.—Could this have been unknown to Lieutenant-Colonel Campbell?—I have read in some Farce of an army in disguise, and ridiculous as the idea is, I know no other way of accounting for the ignorance of Lieutenant-Colonel Campbell on this head.—Did Lieutenant-Colonel Campbell ever hear of that fact, before he heard of it here?—What inquiry was there made about it? If he says that he never heard of it before, I am bold to say, that he was the solitary individual in Cork who did not hear of it: though he was by much the most interested, and the most likely to hear it.

“But my Lord, I shall yet make a nearer approach to Lieutenant-Colonel Campbell, when I bring to your Lordship's recollection, the evidence of Mr. Crowley. He told your Lordship and the Court, that men who denominated themselves by the names of the persons accused, and who stated themselves to be of the 9th regiment, spoke to a person

person whom they called Colonel Campbell. Let me ask in the name of common sense, to what—and to what purpose, for what reason, should these men so denominate themselves? Why should they call a gentleman a stranger to the witness by the name of Colonel Campbell—Why should men accuse themselves as they did of a crime for which they were liable to punishment? Why should they be afraid of other regiments, and not afraid of the 9th regiment? Was it that the discipline of the regiment was so relaxed, or was it that they were such favourites of their Lieutenant-Colonel? What!—an armed party of the 9th regiment able to take them prisoners, and although there is a reward for apprehending deserters—drank in their society and did not apprehend them; yet so formidable was a single soldier of the 20th to them, that they secreted themselves from him. When these questions are answered, and seriously answered, then Lieutenant-Colonel Campbell may say he has acquitted himself before the public. A party of deserters without industry or labour are supported at a public house. They say that they receive their pay, and are there to screen themselves from justice—is there any man existing will disbelieve them?

“ Permit me, my Lord, before I have done with Mr. Crowley, to make one remark upon a part of the proceedings as to that witness. I began to examine Mr. Crowley, on Thursday the 24th July, and at the rising of the Court, I stated that I had done with him; but on Friday morning when the Court was reassumed, I wished to ask him some further questions—The Court then thought proper to examine me if I had been in company with Mr. Crowley, between his examination and that period, and having acknowledged that I had, examined Mr. Crowley also—Mr. Crowley concurred literally in every part of what I had before related; but he happened

pened to differ as to some streets we had walked in. Mr. Crowley, a stranger in Dublin—a gentleman who never was in this city, could not accurately describe streets, lanes and allies—he was a bad Topographer, and he must therefore be a bad witness.—We concurred in this, that we had no communication or conversation of what he was to say; and that on his attempting to speak on the business I forbid all such communication. The Court however, conceived an impression; and of whatever avail might be the few questions I wished and intended to ask him, I was thereby prevented.

“ My Lord, in this stage of the prosecution I tendered in evidence, the record of the conviction of these men, and I will fairly tell your Lordship why I did so—that the description of the men might appear, and the relation they bore to the 9th regiment of foot. I knew that a collateral conviction of others could not be original evidence against Lieutenant-Colonel Campbell. But surely, my Lord, it is a circumstance added to the heaps of circumstances which I have adduced to sustain this charge.

“ Here, my Lord, I brought forward one Powel, a soldier of the 9th regiment; your Lordship must remember how costive he was when I examined him. There was a direct negative to every question that I asked; but as soon as he got into the hands of Lieutenant-Colonel Campbell, he became as free as he had been before close mouthed. Every thing tending to criminate me was answered with such precipitation and eagerness, that it seemed to convince your Lordship, that he had *humbugg'd* me in the information he had given me, and satisfied me, that he was then humbugging the Court in his answers to Lieutenant-Colonel Campbell's cross questions. One thing however he shewed, that I had been prodigal and profuse of my money, if he was to be believed, to
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one of the most worthless and deceitful of his countrymen.

“ From the evidence of Coffee, it appeared that Robert Augur was publickly in the city of Cork in his regimentals, after the riot and assault—that he saw him twice on Saturday after the riot and assault, and this must have been in any event, at least the sixth day after the riot, which happened on Monday the 12th of November committed, and shews to a demonstration, that Augur was in Cork, and had not deserted on the 16th of November, the day upon which it appears by the affidavits, which your Lordship admitted as evidence on behalf of Lieutenant-Colonel Campbell, the Sheriff demanded the other offenders sworn against by me from Major-General-Patterson. For the first Saturday after the riot and assault was the 17th of November, as your Lordship will find by the Almanack, which I am advised is much better evidence than these affidavits. One of these times Coffee saw Augur, was a quarter before ten o'clock in the morning of the market day, a day when every military man knows he must be more liable to discovery, if he were a deserter, from the number of the military who must go to market to purchase provisions; and at both times Augur was in the vicinage of the Barrack—a strange place for a man who had deserted, to choose to conceal himself!

“ It appeared to the Court that there was a person whose testimony I expected, and did not obtain, I mean corporal Petrie; why I did not get his attendance, I cannot tell. Your Lordship however, on looking into a letter, written to me by order of Lieutenant-Colonel Lind, was pleased to say, that I had used every means in my power, to procure his attendance; with such a declaration in my favour. I feel some consolation, and do not so much deplore his absence, nor the mutilated state of this case arising therefrom.

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" My next witness was serjeant Stagg of the 9th ; he proved that Moore was brought up to the regimental, on the 29th of December and made his escape from it. Will your Lordship be good enough to turn your attention to a part of this man's examination ?—He was asked " Did you ever receive orders from Lieutenant-Colonel Campbell, not to deliver up to the Civil Magistrates the said Moore, in case they should demand him," and he answered, " I did"—But on Lieutenant-Colonel Campbell's rising and looking at the witness steadily, and requesting the question to be put again, as he believed the witness did not understand it, the question was again propounded, and he said " He did not,"—Your Lordship seeing the balance so equally suspended, again put the question to him, and he again answered it affirmatively ; and upon the fourth time of the question being put, again answered it negatively—and in the further progress of the business he apologized for this inconsistency, by saying that he did not understand the question ; and it then appeared that he was well qualified for the duty of a serjeant, from his own evidence, as he said he could not read !

" At this stage of the business, I applied to the Court for a letter to the Mayor of Cork, requiring from him a letter which had officially passed on that occasion, between him and Lieutenant-Colonel Campbell, and which he refused to give without the sanction of such an authority—Your Lordship was good enough to order a letter to be written by the Judge Advocate for that purpose ; but the Mayor, who was ready enough to make a voluntary affidavit on behalf of Colonel Campbell, has not as yet thought proper to answer the Judge Advocate's letter.

" The next witness I produced was Benjamin Leggate, and I shall only observe upon his testimony, that

that upon his being cross questioned by Lieutenant-Colonel Campbell, he endeavoured to prove that I had offered him money to give evidence against Lieutenant-Colonel Campbell.

“ But in my apprehension, he perfectly defeated what he endeavoured to prove against me; for he declared that he had told me, he would give no evidence against Lieutenant-Colonel Campbell—and yet I had him called to support my charges. Is there any thing like the conduct of a man in his senses in that?—A man declares to me he could give no evidence against Lieutenant-Colonel Campbell—I hold a dangerous conversation with him, and I expose myself to the discovery of it, by producing a man so ill disposed towards me. In truth, I was not surprised, when I desired him to look at me he blushed—for I never had spoken to him until the moment I began his examination, in this Court, and for that reason I made him again repeat his certainty of his telling me that he could give no evidence against Lieutenant-Colonel Campbell.—That your Lordship and the Court might see the probability of my adducing such testimony, after such a declaration—for I must have been an idiot indeed, if I should have done so, and I trust that the present trial has not shewn me to be one.

“ The next witness was William Harvey of the 20th, who on the day after the riot saw Robert Augur and another soldier in a public house in Cork—that Augur wanted to change a guinea, and said that he had got that and a pass from his regiment, and was going out of town, for fear of being taken up for assaulting Mr. Gwynne. I acknowledge this is but another circumstance added to the many I have adduced; and I remember on that occasion Harvey was asked, did Augur mention Lieutenant-Colonel Campbell, and true it is he said, he did not; but permit me to observe, that if the declaration of Au-

gur be evidence, he said he had got the guinea and the pass from his regiment, and surely that implies a knowledge in the Lieutenant-Colonel.

“ But if any thing can render certain the charges I have adduced, it is the evidence of Mr. John Moran, gauger :—He proved that several of the deserters were at Martin Kenefeck’s, at Clontage, one of their names he proved to be Dibel, and he had before seen a gentleman that was said to be Lieutenant-Colonel Campbell, and on looking round the Court, he pointed out Lieutenant-Colonel Campbell, and he said that he saw that gentleman, whom he then took to be Lieutenant-Colonel Campbell speak to Dibel and another of the accused men, within the period of the assault being charged to be committed, and at the time of their being apprehended. True it is, he said that he did not know the person that he took to be Lieutenant-Colonel Campbell, and who spoke to the men to be Lieutenant-Colonel Campbell. Why the name of every man can only be proved by reputation—for he that was at the baptismal font and saw that ceremony performed, could only prove my Christian name, and even had he known my parents, he could only have known their surnames by reputation. I do not know the names of many persons who compose the Court, yet I know their persons and know their names by reputation. It was but the other day that I learned the name of one of the members who compose this assembly ; if therefore I wanted to prove that any one of the members of this Court had been a member of it, I could only prove it by the identification of his person, and from my knowledge of his name.

“ And surely if ever there was an identification of a person, it was Mr. Moran’s specifically pointing out Lieutenant-Colonel Campbell, and if that be admitted, nothing is clearer than that Lieutenant-Colonel Campbell had conversed with two of these deserters

deserters after their being accused ; and if the Lieutenant Colonel had not spoken to them, he had an easy power to disprove this fact. I should not venture to make so strong a reliance on this testimony, for sure I am, the Court would have delayed until Lieutenant-Colonel Campbell should be able to produce Dibil to disprove this fact, and to have refuted even the presumption of such a charge. Did his friend advise him not to produce him ?—I am sure he did not.—Captain Smith was then produced, and it must be fresh in your Lordship's mind, that he told the Court that Lieutenant-Colonel Campbell said that he would not for 500l. that I had been assaulted.—Was that for my sake ?—No—for if it was, he would have offered some part, at least of the five hundred pounds for apprehending and convicting the men ; but the contrary has appeared from the evidence, as these men never were advertised at all.

“ Here the Court thought proper to interpose and to ask me some questions, to which I gave answers ; and which, as well as my recollection and the minutes of the gentleman who assists me serve me, were to the following purport.

Court. “ Did you yourself make application to have these men advertised by the Commanding Officer ?

Prosecutor. “ I did not.

Court. “ You seemed to wish, to impress the idea that it was the duty of the Commanding Officer to do so, “ Did you make any application to Lieutenant-Colonel Campbell for that purpose ?

Prosecutor. “ I did not.—I was advised not by the Magistrate, and I made the application to him, through the Magistrate, and not otherwise, and he desired me to wait, to see what Lieutenant-Colonel Campbell and the regiment would do in it ; and gave me as a reason for it, that if they were not concerned in it, they would advertise, and use every

exertion to apprehend the persons concerned in or accused of the riot and assault, for their own credit and that of the regiment. Here I was interrupted by a member who objected to my being asked these questions, I not being then sworn; and I then desired to answer them on oath, and understood that these answers were to appear upon the minutes of the proceedings; but on the next day I learned that they were not—perhaps I at first misunderstood the noble President; but certain it is, I so understood him.

“ I here closed my oral testimony, and I am now more particularly to intreat the attention and assistance of the Court, as I shall more particularly need it in this part of my evidence, as it is intended to discover the mystery of fraud, and to develop the artifices which are meant to elude observation.—Clumsy indeed must be their practice who try to cheat without art! Plain palpable blunders would disgrace the ingenuity of so able an artificer; to lay open its mazes and to find truth in the recesses, will be a difficult, but I trust not a fruitless search.—And I apprehend that the third Article fourth Section of the Articles of War, makes Lieutenant-Colonel Campbell responsible for these returns and muster-rolls.

“ It is said by Lieutenant-Colonel Campbell, that no charge has been exhibited against him for false musters.—True it is—there is not—This however at least tacit admission, that such a charge might be proved against him, will serve to shew that I have not put forth all my strength as a Prosecutor, as I avoided the making the charge of false musters any part of my charge. Not continuing to be connected with the army myself, I did not consider so eagerly, what was for the mere good of the service, as the protecting myself and the public in their civil capacities. This will also account to your Lordship
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and the Court, for my stating so few, out of the multitude of inaccuracies and inconsistencies appearing on the muster-rolls and monthly returns, and which were only these, which seem peculiarly to appertain to my present charge.

“ First, then is it not strange, that there should be an erasure and a fresh insertion in the date of the desertion of every man who was charged with the assault upon me; and who was since convicted thereof; and more strange yet, that in one of these instances, one of them, Matthew Dibel should be returned as deserted on the 3d of November, nine days before the riot happened! Though they were all proved by Captain Smith to have deserted on the same day on the 13th. Must not such erasures so peculiarly pointed, raise suspicions in the mind of any man, however unsuspicious, however uninterested he may be?—Of these alleged deserters nine are returned, as having returned from desertion, and in prison.—What had Robert Farquar done that he should not be so returned also?—he is reported to have deserted—he was at the same time with the rest, put into the same gaol—he is now in the same gaol, convicted of the same offence.—His merits were the same! His services were the same—his desertion was the same! Why should not his return then be the same?

“ John Cooper by the muster-roll is returned to have deserted on the 13th of November, and to have been discharged on the 15th of January.—Lieutenant-Colonel Campbell has asserted, that the John Cooper accused by me, is not the John Cooper who is returned as discharged—But assertion is not proof—If he were not the same person, how easily could Lieutenant-Colonel Campbell have proved the fact?—He had the muster-roll of the regiment.—He had his Paymaster—his Adjutant—and Serjeant-major here, who must have known and could prove, if
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the fact were so, that John Cooper who was accused of the assault, is not the John Cooper who is reported to have been discharged.

“ When your Lordship refers yourself and the Court to the monthly returns, which are made as it were on the instant, you will find that on the return made on the first of December, it appears that from Captain Buchanan's company, there were only three deserters, and from Captain Rose's company, but two ; but when you inspect the muster-rolls for the same period you find five deserters, four of whom were accused, and afterwards convicted of the riot and assault, from Captain Buchanan's, and three from Captain Rose's, all accused and since convicted of the riot and assault. Now is not the fair inference, that the monthly return made before this serious inquiry, was known to have been meditated the probable truth : The difference between the two are three men, two at least of whom are accused of this crime.

“ In order to patch up and seemingly amend these defects, Lieutenant-Colonel Campbell has referred to an extract from the Casualty Book of the regiment, which he promised he had properly attested. But this book could not be admitted as evidence for Lieutenant-Colonel Campbell, though it might against him; because it was always in the power of Lieutenant-Colonel Campbell himself, to mutilate and alter it at his pleasure. But suppose it could, what became of Lieutenant-Colonel Campbell's promise, thus solemnly made, did he produce it properly attested ? No, he did not—and when called upon to tell if he could have it properly attested, he confessed he could not.—What then becomes of his assertions so readily made, and so very ill followed up by evidence ?

• “ But the ends which were to be procured by the Casualty Book, could have been much more easily attained,

attained, if Lieutenant-Colonel Campbell desired it. He talks of immutable written proofs, which will remain the same to-morrow as they are to day.—Proofs that cannot be touched or tampered with.—So too, forgery, if it has once been practised, will remain to-morrow a forgery as well as to day—and the longer it has continued to deceive, the more effectual its operation!——But Lieutenant-Colonel Campbell had better evidence, whose cross questioning would elucidate the truth of whatever they delivered, and who must have been acquainted with every circumstance in the regimental Casualty Book. Why did he not examine Captain Smith, the Paymaster, who from his situation, must in every month at least have known of these suggested removals, to enable him to issue the pay?—Why did he not examine Adjutant Keightly, who from his situation must have known every man in the regiment?—Why did he not examine Serjeant-major Maclean?—His avoiding to examine these men who were here present, and could prove his assertions, if true, speak with more eloquence as to these assertions, than if I had proposed to produce a million of contradictory evidence.

My Lord, I have done with my remarks on the evidence, and only claim to observe, that Lieutenant-Colonel Campbell in his defence, has for once stated a truth, I mean when he says, that he “feels a sincere satisfaction, in reflecting that I do not bear “his Majesty’s commission.” It has been a long time since I felt this to be the truth.—It is a long time since I experienced that to be his wish.

“To another instance of his veracity, I shall subscribe, I mean to the gallant conduct of the 9th regiment in the late war; but by whom was it then commanded?—Not by Lieutenant-Colonel Campbell—nor are there above four or five and twenty privates, and not more than three or four officers
now

now remaining in the regiment who then served in it; and I much question if any one of the present Field Officers of that regiment, could now draw to himself as much honour as one of the youngest ensigns then acquired.

“ It is my misfortune to differ upon almost every other subject from Lieutenant-Colonel Campbell. He has said he had no principle of revenge or resentment against me. Perhaps I should now have continued to belong to that class of men to whom the Lieutenant-Colonel so proudly boasts his connection, if he had not long since made me sensible of the inaccuracy of that assertion.

“ That several of the offenders are at this moment confined for the crime which they perpetrated on me is true; yet the Lieutenant-Colonel has, upon this occasion, shewed himself a GENERAL, for by a *manœuvre*, which has been truly successful, he has had two of his favourites, Adjutant Keightley and Serjeant Reilly, who had been convicted of the assault, brought up here for the pretended purpose of giving evidence; although he has never called upon them. Is it now doubtful how Serjeant Reilly procured bail?—Here too let me say, that now, that the Lieutenant-Colonel has closed his defence, if I shall hereafter see either of these men at large, that I shall apply against the officer who ought to have them confined for this neglect of his duty, in a court competent to punish him. For I will not permit even Lieut. Colonel Campbell any longer to offend the eye of the public, by walking arm in arm, in the palace of the viceroy, with one of these convicted offenders, against the laws of the land and the public justice of the country.

“ Give me leave to observe, that Lieutenant-Colonel Campbell gave in a large list of other witnesses, not one of whom he has produced; and I am sure if any one of them could be of the smallest
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use to him, he would have been advised by that friend who assists him, and whose ability and integrity was only exceeded, as I am informed, by his feelings of honour, to bring them forward to dispel, if possible, that cloud of circumstances, which do and must for ever obscure his character.—No, he has brought forward—What! a voluntary affidavit, which, even if taken before a magistrate, is truly questionable. But Mr. Hewson did not prove that the persons, before whom these affidavits were taken, were magistrates. To the receiving of these affidavits I humbly, but boldly, made one objection; which was in the following words:

“ Mr. Gwynne objects to the receiving, in evidence, the affidavits of James Kingston, Esquire, mayor, and Jeffrey Persey and Rowland Morrison, Esquires, high-sheriffs of the city of Cork; in as much as they are alive and able to attend, and especially, as Mr. Gwynne had been informed by the Secretary at War, ‘ that he had it in command from His Excellency to acquaint him, that, upon every principle of justice, as well as on the established practice, deposition by affidavit or letter is inadmissible. The personal attendance of the parties making the affidavits is therefore indispensably necessary to answer the ends of justice; and there is a case in point of a very recent date, which settles the matter beyond the possibility of a doubt; and therefore Mr. Gwynne did not adduce any such evidence.’

“ This objection did not appear pleasing in this form to the Court, and I therefore formed it anew, by omitting the words, ‘ By the Secretary at War, that he has it in command from His Excellency to acquaint him;’ and inserting in their room, ‘ from the highest authority.’ This mode of framing the objection, being still questionable, the Court was
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cleared ; and after some deliberation, there was a new shape given to it by the Court.—To it I objected, and said it was the Court's objection, and not mine. But, I confess, I afterwards accepted of the objection framed by the Court, having first promised to be admitted to read my own objection in my own words, as part of my speech ; and that it should, as such, be entered on the minutes.—I may be asked why I so pertinaciously adhered to any set form of words. I will fairly tell your Lordships and the Court why I do so.—I wish your Lordship and the Court, and the public at large, to know unequivocally, and in the most precise and clear terms, that I understood that the faith of government was pledged to me, that such evidence could not be adduced ; and that therefore I had avoided it, and that so far I had unequal measure dealt to me.

“ The Court also over-ruled its own objection, which I have admitted to be tantamount to mine. And here let me say, that I am advised, that though the persons who made these affidavits were magistrates for the present year confined by duty at Cork, that that is no ground whatsoever for the admission of that kind of evidence, though perhaps it might be one to postpone this trial until they should have been able to attend. But that not having happened, let us see the criteria of the admission of such kind of evidence, which are—that the person making them is “ *dead,*” or “ *unable to travel,*” or “ *kept away by the means or procurement of the prisoner, and that it is the very same that was sworn before the justice, without any alteration whatever.*” To these criteria I might adduce the authority of all the lawyers who have written either on crown law or on evidence. However, admitted they were.—Yet let me add one remark more on the futility of these
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voluntary pieces of evidence. Are they made in any cause? Are they made in any court competent to administer an oath? They are not so, that I am not only deprived of what the Court calls Cross-questioning, but if there are ten thousand falsehoods upon the face of them, all clear as the noon-day sun, I cannot indict the persons so swearing for perjury. And after all, what are the whole of what appears, on these affidavits, which are neither cross-questioned nor indictable—a string of hearsays—a heap of beliefs—a parcel of trash, such as, I am bold to say, has not before been received in a court of justice.

“Lieutenant-Colonel Campbell asks, can it be supposed that he wished to screen one part of the soldiery rather than another? The fact is, that he did so. But why? because he knew those whom he delivered up would be bailed, and therefore suffer no hardship from being so delivered up. He expatiates on the folly and madness of doing particular acts.—The perpetrator of every criminal act labours under a temporary insanity.

“As to the case of Cooper, there is the assertion of Lieutenant-Colonel Campbell; but assertion is no proof. And I assert the direct contrary. So that one assertion is as forcible as the other, and let them both go for what they are worth.—In law they are nothing.

“Lieutenant Colonel Campbell has laid great stress upon a Court of Enquiry, held in January last, to which I was by no means a party or privy.

“He has also spoken of my dismissal from the service; I had hopes that he might have forborn a topic, that in the minds of men of honour, can do him no credit, and me no disgrace—he has on this occasion manifested his usual recollection, a very convenient one indeed! Which only recollects what may advantage himself and disparage his adversary; but

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he does not remember one word of another complexion. Will Lieutenant Colonel Campbell say, there existed no difference between him and me, when the occurrence happened to which he alludes? Nay will he venture to say, that had he been in the place of that Officer to whom he alludes; that what happened in the person of that Officer, would not have happened to himself?

“ That Officer was but one of a set, a juncto, of whom Lieutenant Colonel Campbell was head. And as it is to be thought, that I should suffer patiently wrongs from him, while others were made public objects of my indignation.

“ Bills of indictment, it is said by Lieutenant Colonel Campbell, have been ignored by the grand jury at Cork. It is true. But why did they do so?—upon my personal application to them, as I knew I could not at that time effectually prosecute. Why? Joseph, whom Powell has endeavoured to impress the Court with an opinion, that I had instigated to desert, was necessary to bring the charge home. And I did not wish that Lieutenant Colonel Campbell should have an acquittal to plead in bar of any future prosecution.

“ My Lord and Gentlemen, I have done—let me only add, that my resentment is that of a citizen towards an offender against the laws of the land. To Lieutenant Colonel Campbell, as Lieutenant Colonel, I can have none! I can entertain nothing personal against a man, who when I went first down to Cork, after my quitting the army, was so conscious of the injuries he had before done to me, that he descended so low as to go about with a paper in his hand, to all the Field Officers and Captains in Cork, about the latter end of October, or beginning of November last; and there were many there then; as there were some from every Regiment of Infantry then in Ireland, requesting them to sign a paper the purpose of which was to excuse him, if I should
call

call upon him, from giving me that satisfaction, which every man of honourable feelings owes a gentleman whom he has injured or offended. If there had been no difference between us, why should he require such a paper?

“ But untruth cannot be correct. I shall with this remark now leave him with your Lordship and the Court, with the superadded delinquency which I have already stated, and sure I am that every impartial and unbiaſſed man will ſay, that his perſonal conduct has been ſuch as to be an object not of reſentment, but of contempt—not of my indignation, but your juſtice.

Give me leave to add one word—which has ariſen from ſome expreſſions that gave the Court offence. They have been expunged. They were my own. My friend in his cloſet could not ſo ſtrongly have participated my feelings; nor let his paſſions be ſo much in ſubordination to the ardour of mine. He has often wiſhed to moderate and reſreſs; never to heighten or accelerate them. I relied upon his advice as a lawyer. I depended upon myſelf for my conduct as a man. For it let ME be answerable! I muſt therefore, vindicate him from any cenſure, which may in the moſt remote degree ſeem to appertain to him for theſe expreſſions.—If there be any it belongs to me, and to me only.

F I N I S.

Ex. 20/30/14

C.W.A.

The first thing I saw when I stepped out of the car was a vast, open landscape. The air was crisp and clear, and the sun was shining brightly. I felt a sense of freedom and adventure. The road ahead was long and winding, leading me to a small town nestled in the hills. The people there were friendly and welcoming, and they showed me the best of their culture. I stayed in a simple, rustic inn, and the food was delicious. The night was peaceful, and I fell asleep with a smile on my face.